In the Matter Of:

WIENER vs AXA EQUITABLE LIFE INSURANCE

CV-106-RJC-DSC

SANFORD ROBBINS

January 27, 2020

O = overruled

S = sustained

Robbins

those policies were previously in place with AXA Equitable or any of the AXA affiliates?

A. I was aware that they were previously in place because I was told that.

Q. Do you in your professional work, do you work with AXA?

A. I do.

Q. Do you place policies with them?

A. I do.

Q. I guess more broadly, are you familiar with AXA's underwriting policies and procedures?

A. Completely.

Q. Are you familiar with other companies' underwriting policies and procedures?

A. Yes.

Q. Do you find that AXA's underwriting policies and procedures differ from any other companies that you're aware of, significantly?

MR. CASSOT: Objection to the form.

MR. TRAYNUM: That's just an objection for the record. A judge will

S

OBJECTION
relevance
(see dkt 72)

Robbins

decide whether that objection stands. So we will need your answer regardless. Now, whether or not anyone hears that will depend on what the judge has to say.

A. I do find their underwriting tougher than the average company.

Q. What you do you mean by "tougher"?

A. When applying for life insurance they are more likely to provide lower or not as favorable rating classifications as other companies might provide on the same insured.

Q. Is there anything about that that you believe is inappropriate?

A. No. I don't believe there is anything inappropriate.

Q. Now, in terms of what you were tasked to do or -- that's the wrong word. Tell me what you understood the Wieners were asking you to do when you were referred to them or they were referred to you.

A. I believe they were asking me to secure insurance for them to replace the policies that they could not reinstate.

Robbins

something in. Is that related to Mr. Wiener?

A. It's exactly the same thing you had already. There's no other -- there was nothing else.

Q. Okay. So I have right now as Exhibit B is every document that you're aware of that you have related to Mr. Wiener's file?

A. That's correct.

Q. Let's go through these and we may be done.

The first page of Exhibit B -- and, again, these are three separate pages. I don't mean to suggest that this is all one documents. These are three separate documents; is that accurate?

A. That's correct.

Q. And I've just attached them together and labeled them as Exhibit B for convenience.

So the first page of Exhibit B, can you tell me what that is, what that communication is?

A. This a declination of an application, something called an informal

Robbins

application to John Hancock which they advised Mr. Wiener's been declined.

Q. What is the difference between an informal application and a formal application?

A. Informal applications, the insured does not sign an application for it to be issued. It's only used for the purpose of underwriting to get a decision. And then once a decision is reached, the insured has an option to accept at that pricing or not.

Q. This first page, do you know who carrier this is?

A. John Hancock.

Q. Are you familiar with John Hancock's underwriting procedures?

Objection

Foundation; relevance

A. I am.

Q. In terms of an informal underwriting procedure, are you familiar with what process they go through in order to obtain an informal decision?

Objection

Foundation; relevance

A. I am.

Q. What is that process?

objection

Foundation; relevance

A. They review the medical records only and determine based upon the medical

Robbins

records whether they would approve, if they take it to the next step, which is to review the records from the Medical Information Bureau and the prescription records.

Q. So if I understand what you're saying, based on an informal review that's based on -- do you understand when they say "attending physician statement," is that medical records?

A. Yes.

Q. To your understanding?

A. That's what that is.

Q. So those are the medical records from the physician. Those aren't MIB records?

A. That's correct.

Q. So this decision was based on the medical records received from the physician?

A. Correct.

Q. And based on what your understanding is they would not have done an MIB request at the informal stage; is that correct?

A. That's correct.

Q. So any of the decisions made by

Objection
Foundation
Lack of personal knowledge

Objection
Foundation; Lack of personal knowledge

Robbins

John Hancock were made based on the physician records, not on anything they obtained from the MIB, as far as you understand it?

A. That's correct.

Q. The second page, can you tell me what carrier that would be?

A. Principal Life.

Q. Are you familiar with Principal's underwriting processes?

A. Yes, I am.

Q. Are you familiar with how the Principal would have undertaken -- first of all. I apologize. What was John Hancock underwriting's decision?

A. They declined him.

Q. Based on what?

A. His medical records.

Q. So then the second page then is the Principal -- I'll ask that first. Do you have an understanding as to what the Principal's decision was with respect to its informal review?

A. It's exactly the same as John Hancock, how they review things. They don't

Objection
Foundation; lack of personal knowledge

Objection
Foundation; relevance

Objection
Foundation; relevance

Objection
23:24-24:6
Foundation; lack of personal knowledge; n responsive

Robbins

go through the Medical Information Bureau records until -- or the prescription records until an application has been submitted for legal reasons. They're not allowed to do that.

Their approval -- just so you know, is a Table 4 rating, which is 200 percent of the rate of standard. It's basically double the standard rate.

Q. So in other words, twice as much, costs twice as much.

A. Costs twice as much.

Q. As you understood it, what was the reason that was given for that rating?

A. The atrial fibrillation and whatever they say here. The -- I can't even say the word -- gammopathy, G-A-M-M-O-P-A-T-H-Y.

Q. And actually its the monoclonal gammopathy; is that right? If you look under, quote, "tentative NT/Table 4 (due to history of atrial fibrillation and monoclonal gammopathy)," correct?

A. That's correct.

Robbins

And I remember this in speaking with Principal, just to make this completely clear. They believe they would have been able to improve the rating once we received the other records from the doctors and the colonoscopy from 2013.

Q. Okay. As far as you know, were additional records provided to the Principal?

A. They were not provided to Principal based upon my conversations with Carolyn because the cost would have been too high even at a Table 2 or Table 3 rating.

Q. So even if there was an improvement, there was a decision made to not --

A. Correct.

Q. -- provide additional records to the Principal?

A. Yes.

Q. But it's your understanding that, in fact, Mr. Wiener based on the Principal, the Principal was willing to offer insurance. It was just at a very high rate?

A. Yes.

Objection
25:2-25:7
Hearsay

Objection
Hearsay

Robbins

Q. So he was insurable, per the Principal?

A. Yes.

Q. Also on this documents it says, "All quotes are tentative and based on information received" -- I'm looking in the bold face at the middle of the page on the Principal one.

A. Yes.

Q. It says, "All the quotes are tentative and are based on information received. This case will be fully underwritten with an MIB check upon receipt of a formal application packet." Correct?

A. That basis substantiates exactly what I told you as to their rules and process for approving insurance.

Q. So, in other words, again, they would not have done an MIB check until they've already done the record review and already made a determination that they would make a tentative offer?

A. That's correct.

Q. And then the final one is April 9,

Objection

Foundation; improper characterization; lack of personal knowledge; hearsay

Robbins

2014.

And just, again, do you know the date -- and going back to the very first page, and I apologize for moving us all over the place, but do you know the approximate date of the John Hancock decision? There's nothing on that page.

A. It had to be April 2014.

Q. Okay.

A. Because they all came at the same time.

Q. And then the Principal decision, that's dated April 15, 2014. Does that sound about right to you?

A. Yes.

Q. And then the Security Mutual Life is April 9, 2014?

A. Yes.

Q. So that's about when you would have received their decision?

A. Yes.

Q. Are you familiar with Security Mutual's underwriting processes?

A. Extremely.

Robbins

Q. Are they similar to John Hancock and the Principal's?

A. They are not.

Q. How are they different?

A. I have a certain classification with Security Mutual because of my years doing this. So when I submitted the application to Security Mutual, I had Malcolm sign an MIB authorization disclosure which went with this application, and they pulled the Medical Information Bureau file prior to the real application.

Q. Okay.

A. This decision of Table 4 was based upon the Medical Information Bureau coding.

Q. And they were willing to offer a Table 4?

A. Yes.

Q. So, again, is that the same issue where the rate would have been twice as high?

A. Correct.

Q. But nonetheless he was insurable?

A. Correct.

Q. Per Security Mutual?

OBJECTION
l. 11-16
foundation,
lacks personal
knowledge

Objection

Foundation;lack of personal knowledge; improper characterization; improper expert testimony

Robbins

A. That's correct.

Q. When you say that they pulled the Medical Information Bureau records, did they also pull medical records?

A. Yes.

Q. And do you know if the medical records in this case were reviewed by Security Mutual?

A. They were.

Q. So in addition to the MIB, they also reviewed medical records?

A. Yes.

Q. When it says "minimum Table 4 to possible decline range, subject to the usual age/amount requirements to include the following," and then it list four things after that, what did you understand that to mean?

A. It means the same things as the other applications that they will have to -- a real application has to be submitted. They have to pull the prescription records. They have to supply the case to reinsurance, because unlike John Hancock and Principal, Security Mutual will not hold the paper or

Objection

Foundation; lack of personal knowledge; hearsay; improper characterization

Objection;foundation

Robbins

A. My role as a broker is to advocate on the role of the insured, which is different than an agent.

Q. Right.

A. Correct.

Q. Because the agent --

A. Works for the insurance carrier.

Q. And as the advocate for the insured, in your career and your experience how many carriers would you say you've placed policies with in your career?

A. 25.

Q. And how long have you been a life insurance agent?

A. 37 years.

Q. In your experience do any of those insurance companies make their decisions strictly on MIB codes in terms of underwriting decisions without reviewing medical records?

OBJECTION foundation, lacks personal knowledge relevance (see dkt. 71)

A. Some companies make decisions on MIB codes and won't even look at medical records if an MIB code is that bad. I've had many insureds over the years receive declines before I even submit the business once they

Robbins

review the MIB code.

Q. Do you know if the MIB itself has rules that prevent that type of conduct on behalf of insurers?

MR. CASSOT: Objection to form.

Q. The question is if you know.

A. I don't know.

Q. Is John Hancock one of those companies that will do that, as far as you know?

A. I don't know.

Q. Well, to the extent that you've received the three documents that we have, do those documents indicate to you that the three informal underwriting the decisions that were made concerning the application made by Mr. Wiener were based on medical record reviews?

A. I believe all three were based on medical record reviews.

Objection

Foundation; lack of knowledge; non-responsive

Q. And at least two of those did offer insurance but at a high rate?

Objection

Improper characterization

A. Correct.

Q. I have no further questions, sir. Thank you.

Robbins

BY MR. TRAYNUM:

Q. Mr. Robbins, my name is Kerry Traynum.

A. Hi.

Q. I'm counsel for Malcolm Wiener in this case. I have a few questions to start off with and then I might want to take a break and come back and ask a few more.

Just now you were talking about that some companies will review MIB codes and make a decision based on that. Can you explain when you've seen that happen in the past?

A. I've seen it happen where there's been -- the MIB has been coded for alcohol abuse, suicide attempts, heart attacks that have not been disclosed, and previous underwriting decisions of ratings and declines.

Q. If you would explain what you mean by that very last category?

A. The Medical Information Bureau keeps records of all applications and decisions that are reached on each

OBJECTION
p. 34:15-35-7
foundation,
lacks personal
knowledge
relevance
(see dkt. 71)

Robbins

application. So when an insured is declined or rated on a previous application the Medical Information Bureau knows this, and the insurance company uses that information to aid them in the decisionmaking process of a new appl ication.

Q. Now, you mentioned that you -- we have these three written. And you said that you recall receiving other writings back regarding Mr. Wiener at some point. You just don't have them anymore.

Do you recall how many companies that you reached out to on behalf of Mr. Wiener?

A. I believe it was eight.

Q. Do you remember any of the other companies' names?

A. I believe at the time I went to Voya, U.S. Life -- which is also AIG -- Prudential, Nationwide. I'm not sure about the others.

Q. You're not sure if there were any others?

A. I'm not sure.

Robbins

Q. Just from your memory do you recall any decisions or the substance of any communications you received back from these four companies that you've identified?

A. I believe there was nothing favorable.

Q. Do you recall if any of these had received medical records or reviewed MIB codes?

Objection
Foundation; lack of personal knowledge

A. None of them reviewed MIB codes. All of them received medical records.

Q. What was the process by which these companies, as well as the three in the exhibits, received the medical records?

A. The medical records were sent electronically to Christina Torres who is on this e-mail. And she then, based upon the companies I advised her to go to, submits the file electronically to the carriers for underwriting review.

Q. Does Ms. Torres procure those medical records directly from the physician?

A. I do.

Q. Okay. If you'll look back at B, on

Robbins

page 3, Security Mutual Life?

A. Yes.

Q. Mr. Cassot asked you some questions about the minimum Table 4 to possible decline range. Is it fair to say this was not a final decision for coverage?

A. It was not a final decision.

Q. Were any of these three -- well, the John Hancock was the decline.

A. Correct.

Q. That was final.

A. That was final.

Q. And then the Principal, that was a preliminary decision, correct?

A. It was a preliminary decision. And all the other companies that I've provided to you were also declines.

Q. Okay. So out of the seven we've identified, we had two preliminary decisions, not final, and then the rest were declines?

A. Correct.

Q. Have you ever known of a company who will decline to undertake an underwriting decision based on any information they

Robbins

received regarding potential insured?

A. I don't understand the question. So I think we need to rephrase that.

Q. In your experience have you ever known of a company rather than to undertake underwriting -- to undertake to make an underwriting decision, instead of doing that will just decline to make an underwriting decision, to undertake that process?

A. I don't think that -- I don't think that could happen that way because I think the insurance company has to review something to make a decision that they don't want to see it. A company will not decline to underwrite a piece of business without a reason.

Q. Earlier you talked about when you were talking about the Security Mutual, that upon -- I think you said you had the MIB waiver.

A. I believe they pulled the Medical Information Bureau records.

Q. And I want to get your phrasing right, that they declined or they issued -- excuse me. They issued this decision before

Robbins

you ever sent the business?

A. They issued that decision before they pulled the pharmacy records and received a real application.

MR. CASSOT: Objection.

Q. Did you ever have any communications with any of the insurers you contacted on behalf of Mr. Wiener regarding MIB codes?

A. I don't recall exactly what happened, but I do recall that in speaking with the insurance carriers I was told that the Medical Information Bureau file had a coding in it that created an underwriting issue.

Q. When you say "underwriting issue," what do you mean by that?

A. Meaning to issue the policy at standard without a rating.

Q. Just for the record and for my information, what do you mean by when you say for "standard without a rating"?

A. A standard policy would be the rate that a typical person would obtain if they

OBJECTION foundation, lacks personal knowledge relevance (see dkt. [illegible]

OBJECTION foundation, lacks personal knowledge relevance (see dkt. 73)

Robbins

were healthy. And someone that's Mr. Wiener's age, that would be the goal.

There are better classifications such as "preferred," but it would be unrealistic to think that someone at that age would obtain that.

Q. Just so I'm understanding it, so there was some type of feedback from at least one of the companies?

A. I think it was Security Mutual, but I'm not sure --

Q. Okay.

A. -- that advised me that there was a potential issue.

Q. And ultimately they came back with a decision minimum Table 4 to possible decline range, pending these four other --

A. Yes.

Q. -- bullet points.

What does minimum Table 4 -- is that the double the standard?

A. That's double the standard as the best rate possible.

Q. Do you have any idea what in a

S

OBJECTION foundation, lacks personal knowledge relevance (see dkt. 73)

O

OBJECTION foundation, lacks personal knowledge relevance (see dkt. 73) undisclosed expert opinion

Robbins

dollar amount that would have equated to for the amount of insurance Mr. Wiener was seeking?

A. The standard rate was approximately 400,000 per 10 million, and equated to an extra 400,000 per year.

MR. TRAYNUM: Let's take a short break.

(Recess.)

Q. Mr. Robbins, we're back on the record. You're still under oath. I just have a few follow-up questions.

You mentioned that Mr. Wiener provided an MIB waiver that you provided to Security Mutual.

A. He signed a HIPAA form --

Q. Okay.

A. -- which allows the company to secure records.

I'm not even 100 percent sure that Security Mutual pulled the MIB, but I do recall that I had a conversation with the underwriter there because I know them so well, and I just don't recall the details.

Robbins

Q. Do you recall the name of that underwriter?

A. Keith Brown.

Q. And this HIPAA form, would that have been something that Mr. Wiener provided to you not -- as part of enabling you to obtain his records to provide the companies?

A. It was a package I would have given him to sign.

Q. My more specific question is: This was not something that you did specifically for Security Mutual that you can recall?

A. No. No. I don't think I did something specific for Security Mutual.

Q. And you mentioned earlier when we were first talking about John Hancock and going through your familiarity with their underwriting guidelines and processes, that they looked at physicians' records and not MIB codes because of legal concerns?

A. Right. You can't -- some companies believe they can't pull the Medical Information Bureau records until a signed application is presented.

Robbins

Q. So a formal application?

A. Correct.

Q. But not all companies operate like that?

A. Not all companies do that.

Q. And you also mentioned that the MIB database or the information available from the MIB would include other -- history of other declines?

A. Yes, 100 percent of those.

Q. So depending on the order in which the -- the responses you got back from -- that Mr. Wiener got back from the MIB, would that -- or from the different companies, would that be available from the MIB?

A. No. That's why these are all informal. That's one of the reasons I do informals, because it doesn't affect or hurt the client's or insured's MIB record. Once a real application is submitted, by law they're required to file the codes with the MIB.

Q. They're required by law to file the MIB codes?

A. They're required to notify the MIB

OBJECTION foundation, lacks personal knowledge

Robbins

of their decisions.

Q. Okay.

A. And how the MIB codes it, I don't know.

Q. In terms of the decision -- let me ask you this. Are you familiar in any way with AXA's decisions regarding Mr. Wiener's life insurance?

A. I'm not.

Q. Do you know if that would have been reported to the MIB?

A. I don't know how -- I don't know if a reinstatement form was used for AXA. If a reinstatement form was used for AXA, it definitely was reported to the MIB. If it was simply too late to reinstate, then it probably wouldn't be.

MR. TRAYNUM: That's all the questions.

BY MR. CASSOT:

Q. Just a couple of follow-ups.

How do you know that MIB gets reports of underwriting decisions?

A. I've seen it my entire career.

OBJECTION foundation, lacks personal knowledge relevance (see dkt. 72)

Robbins

Q. What's the code?

A. I have no idea what the codes are.

Q. What is it that you see that causes you to believe that --

A. I don't see anything. I hear the insurance company tell me that the MIB was coded for this or coded for that. I never know what the code is or what it means.

Q. Okay. And somebody has told you the MIB has coded a decline?

A. Many times.

Q. Okay.

A. I'm not talking specifically about Mr. Wiener. But many times, at least 50 in my career, I've heard that and seen it.

Q. And when someone is coded for a decline, does that make it an automatic decline for subsequent carriers?

OBJECTION foundation, lacks personal knowledge undisclosed expert opinion

A. It makes it a harder underwriting process because they need to do the research as to why the decline occurred.

Q. And that would include reviewing MIB codes, correct?

A. It would involve reviewing MIB

ESQUIRE

12-12-2017

Attn: D. BARRY BOYD, M.D., MS
Re: **WIENER vs AXA EQUITABLE LIFE INSURANCE**
Deposition of D. Barry Boyd, MD, MS, taken on 12/08/2017
Your Case Number 1:16-cv-04019-ER
Our Reference Number 742105

Dear Sir or Madam:
Please be advised that the transcript in the above-referenced matter is available for reading and signature. Enclosed you will find a condensed copy of the transcript, a Declaration under Penalty of Perjury Certificate and Errata pages to note any necessary changes or corrections to the transcript. The Original transcript has already been released to the custodial party.

The witness should complete the following steps within 60 days of the date of this memorandum:

- Read the enclosed copy of the transcript of your deposition
- Make any corrections necessary on the Errata page only. If you do not wish to make changes, write "No Changes" on the top of the Errata page.
- If you require additional space to list changes, you may use your own paper. Remember to include witness name, deposition date, our reference number, and the page/line location of each change.
- If there are multiple transcript volumes, complete Errata pages separately for each volume.
- Sign the bottom of the Errata page(s)
- Sign and date the Declaration under Penalty of Perjury.
- Return only the Declaration under Penalty of Perjury and signed Errata pages. The condensed transcript is yours to keep.
- Return completed forms to:

  Errata Processing Division
  Esquire Corporate Production Department
  Suite 2700, 101 Marietta Street
  Atlanta, GA 30303

If electronic documents are permissible in the applicable venue for this matter, you may instead submit a scanned copy of the Declaration under Penalty of Perjury and signed Errata pages via E-mail to errata@esquiresolutions.com .

Upon our receipt of completed Errata pages, we will archive and make the changes available in electronic form to all counsel. After archiving we will forward the original Errata pages on to the custodial party, to be reunited with the original transcript.

ESQUIRE

In the event any of the above instructions differ from a stipulation or contradict a previous agreement between counsel regarding witness signature, please disregard this letter's details and follow the protocol as agreed upon by and between counsel.

If you have any other questions regarding this process, please contact Esquire Client Support at 800.211.DEPO (800.211.3376), or ClientCare@esquiresolutions.com .

Thank you,

Corporate Production Department
Esquire Deposition Solutions

Enclosures

Cc: All Counsel present

Ref: 742105

Reference No.: 742105

Case: WIENER vs AXA EQUITABLE LIFE INSURANCE

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____

D. Barry Boyd, MD, MS

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of

_____, 20____ before me,

(Notary Sign) _____

(Print Name) Notary Public,

in and for the State of _____

Reference No.: 742105

Case: WIENER vs AXA EQUITABLE LIFE INSURANCE

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

Page No._____Line No._____Change to:_____

_____

Reason for change:_____

SIGNATURE:_____DATE:_____

D. Barry Boyd, MD, MS

Page 25

manager or the assistant manager, a senior member who is in the, you know, clerical staff.
Q. Now, this record request comes in through a vendor, who then apparently does a copying of the records at your office location. Is that something you are familiar with?
A. No.
Q. Okay. Do you have any idea the actual mechanism by which your records were forwarded to AXA for review?
A. No.
Q. Have you had an opportunity to evaluate those records that were forwarded and that AXA relied upon for reviewing your records?
A. Yes.
Q. Were those your records?
A. Yes.
Q. Were those complete records for the time period that was requested?
MR. REILLY: Objection.
THE WITNESS: Yes.
BY MR. CASSOT:
Q. There was nothing missing from that time period?
MR. REILLY: Objection.

OBJECTION
p. 25:18-26:8
relevance

Page 26

You can answer.
THE WITNESS: I can't completely answer that because the medical records of Mr. Wiener were beyond my records. And I can't answer that every single bit of information that was collected for him medically was present. That would be difficult for me to answer without going through the entire....
BY MR. CASSOT:
Q. Well, I'm going to provide you what has been marked Exhibit 63 in this litigation.
MR. CASSOT: We have been just using the same records over and over again. Do you guys need copies? Do you have them?
MR. REILLY: I believe we have copies.
THE WITNESS: I think I have this in here.
BY MR. CASSOT:
Q. Well, I just want to make sure. So that's part what have we are going to do today, is we're going to make sure that whatever was provided and marked as Exhibit 63 is, in fact, a clear and accurate copy of the records that you had in your possession concerning Malcolm Wiener on those dates.
MR. REILLY: This could be off the record.
THE WITNESS: These are actually right here.

Page 27

(Off the record from 1:39 to 1:40 p.m., as exhibits are organized.)
BY MR. CASSOT:
Q. So, Doctor, I have just handed you what has a hand-marked Exhibit 63. And it looks like in your records you have an actual copy of the Plaintiff's Exhibit 63.
A. Right.
Q. Can you just real briefly -- I'm going to assume and I think everybody can agree that what I handed you as Exhibit 63 and the 63 that is in your binder is the same?
A. Yes.
Q. Okay. Now, that's one less copy to get rid of.
So the records have on the front right corner a date of 1-18-14. Do you have any idea what that date is related to?
A. Presumably, when the records were copied.
Q. Well, I'm going to ask you -- and if you had an attorney representing you here today they would tell you not to presume.
MR. REILLY: Or speculate. So you either know our don't know.
THE WITNESS: I don't know.

Page 28

MR. CASSOT: If you know, you know. And if you don't, there is no harm in not knowing.
THE WITNESS: I'm not sure.
BY MR. CASSOT:
Q. So this front page, it says parameds.com. Is parameds.com in any way related to your practice?
A. No.
Q. Do you recognize parameds as a vendor that obtains medical records from medical practices?
A. No.
Q. Okay. All right. The next page says, Record PDC received for this applicant was illegible when they were copied at the medical facility.
Do you have any knowledge of what that sheet means other than the plain language of what it says?
A. No.
Q. We're going through to the following pages and I'm just going to ask you to just thumb through and confirm that every page that is contained in Exhibit 63 is a page that would have been contained in your medical records as of January 18, 2014.
A. Yes.
MR. REILLY: Objection.
Go ahead and look at it and see if you can answer.

OBJECTION
relevance

Page 29

THE WITNESS: Presumably, assuming they copied everything in that time period, I would say yes, but I can't assume that.
BY MR. CASSOT:
Q. Okay. Have you -- since this litigation began in 2015, have you done any research of Mr. Wiener's -- or any review of Mr. Wiener's original records to determine whether any pages were missing from Exhibit 63?
A. I reviewed the records, but did not look for that particular issue. I was not thinking there was something missing from this.
Q. Okay. Certainly, though, with respect to the review, as you sit here today, you are not aware of anything that jumps out at you and causes you to believe, wow, they missed this page?
A. No.
Q. So as you sit here today, would you be comfortable saying yes, this is a complete copy of Mr. Wiener's records for the past five years as of January 18, 2014?
MR. REILLY: Objection.
You can answer.
THE WITNESS: Yes.
BY MR. CASSOT:

Page 30

Q. All right. So some of my questions are going to seem incredibly self-evident, especially to you as a physician, but I do have to create a record for some of this.
What is the purpose of you charting a patient's visit? You take notes on a patient's visit, correct?
A. Yes.
Q. What is the purpose of doing that?
MR. CASSOT: And if you need to take a call at any point, we can will go off the record. Are you good? Do you need to take it?
THE WITNESS: Yeah, it's an emergency, but I can just text it. I apologize.
MR. CASSOT: We will go off the record. Do whatever you need to do.
(Off the record from 1:45 to 1:46 p.m., as a break is taken.)
BY MR. CASSOT:
Q. So in terms of where I left off was, You do medical charting of a patient visit, correct?
A. Correct.
Q. What is the purpose of charting a patient's visit?
A. It's to provide a record of information

Page 31

regarding the patient's medical history, his immediate history, his previous history, current complaints in the context of his past history, features of his examination relevant to the current complaints, and then both current testing and follow-up testing necessary to manage the patient's medical condition.
Q. Okay, now --
A. And provide a record for future physicians to be able to access so that they have an understanding of the continuity of the patients.
Q. Okay. In addition to future patients, so in other words, the continuity being if you were to retire or the patient were to transfer care, a physician looking at your record would be able to piece together the history of the patient that the doctor can refer to. Correct?
A. Correct.
Q. Okay, so -- and then also an additional group of people, you have indicated that there could be requests -- if there is an adverse outcome, there could be requests of records which would be evaluated to assess potential exposure that the practice or you may have?
MR. REILLY: Objection.
THE WITNESS: Correct.

Page 32

BY MR. CASSOT:
Q. And then another group of people who might rely on the records are insurance companies who are looking for authorization for, for example, additional procedures, medical procedures, those types of things, correct?
A. Correct.
Q. In terms of -- is your practice audited by any type of billing agency -- and by that I mean insurance companies, Medicare, Medicaid, or anything like that -- to ensure practice compliance with billing guidelines?
A. They are subject to that.
Q. Okay. When you say subject to that, that means that at any time any one of those agencies with presumably fair notice can come in and do an audit of your medical records?
A. Correct.
Q. So based on what we have just covered, would you agree it's very important for you as a practitioner to make sure that your medical records are accurate?
A. Correct.
MR. CASSOT: Okay, let's go ahead and take that break because I have got to see what my

Page 33

client wants to talk to me about. All right?
MR. REILLY: Okay.
(Off the record from 1:48 to 1:57 p.m., as a break is taken.)
BY MR. CASSOT:
Q. We were talking about charting. With respect to your personal practice of charting -- and I don't want to be unfair because I know we were just having a little bit of a discussion off the record and I don't want it to appear like I have taken advantage of that.
So when you are doing charting, in 2000 -- let me direct your attention. If you look at the bottom right-hand corner of the pages, I believe they are Bates numbered on yours too.
A. Right, yeah.
Q. If you go to 2428, I believe that's where your handwritten notes start.
A. (Seeking the correct page.) One more.
Q. Okay. 2428 is pretty much where the handwritten notes start on Exhibit 63. Everything prior to that are laboratory results. So let me actually back up a little bit. The laboratory results from Greenwich Hospital laboratory, are they forwarded to you on a regular basis?
A. Yes.

Page 34

Q. Okay. So, for example, if you look at 2427, which is the prior page, I know that's not the entire lab report, but just by virtue of that page, it has administrative service date 3-2-11. What is that date? Is that the date that the lab was done?
A. Yeah. Exactly.
Q. Okay. And then is it forwarded to you -- well, how long after the lab is done is it forwarded to you?
A. It's usually within two to three days.
Q okay, and when you're looking at the labs, do you review the labs with your patients on a regular basis?
A. Frequently.
Q. And do you point out -- just speaking from personal experience, my doctor will either say all your labs are normal or this one is a maybe a little not normal or whatever. Is that how you approach it as well?
A. Yeah.
Q. So looking at, for example -- just by way of example, the AXA 2427 and going down to albumin, 3.2 with an L next to it. What does that indicate to you as a practitioner with respect to albumin?
A. As a physician, it is slightly below normal,

Page 35

but then within the context of the others, I would say we will follow up and repeat it and see.
Q. Okay. Would you have called out albumin as something that you would be following with Mr. Wiener?
A. Yeah.
Q. Okay. Would you have had a discussion with Mr. Wiener as to what albumin levels mean?
A. I may or may not have. I would ask him about his diet and how is he feeling and make sure there is no circumstances that are different.
Q. Okay. But that is something that you would have continued to monitor?
A. Yeah.
Q. Okay. Now, then going to the next page, 2428, can you -- it appears to me that there is at least two different people are handwriting on this page, maybe more. Can you identify which portion of this would be written by you.
A. The less legible. So here is what happens, the past medical history generally is fixed based on the prior history.
Q. Okay.
A. And so that remains there.
Q. So what does that mean, exactly?
A. And the medications are filled in by the

Page 36

nurse. So what happens is this is prepared prior to the visit by the nurse, who puts in what his medical history was, and this, and then records the vital signs.
So you can see the nurse will do that, put in the vital signs. And then I will put in my, essentially, discussion with the patient about what his symptoms are, how he is feeling, his physical examination, and then the current symptoms with the impression and plan.
Q. Okay, so if -- and I'm not sure that it is, but I think this might be the first handwritten notes that we have. If this is the first handwritten note that we have and it has under past medical history memory loss, the nurse would have actually obtained that from a prior note which we would not have?
A. Right.
Q. Do you know when the first time a reference to memory loss showed up in one of Mr. Wiener's records?
A. Again, this is a past medical complaint that he always was concerned about that extended back even into the early 2000s.
Q. Okay, now, HPI, above that, I'm going to ask you to do --

Page 37

A. An impossible job?
Q. -- ask you to read your handwriting and tell me what the HPI says there.
A. Recurrent night sweats. Let's see. Hourly. Hourly. Changed multiple times. Associated with urinary frequency. Episodes of urinary incontinence. Associated with difficulty with sleep. Vivid dreams. Still with fatigue. Notes -- this is my eyes now. Notes he was seen for --
MR. REILLY: These are simple magnifying glasses if you want to try them.
THE WITNESS: No. No, it's not even that. Oh, seen by -- and that's a physician, I think, in New York. Willy Nadler (ph). W. Nadler for back pain. Treated with local steroids one week. With marked nasal congestion. Continued memory difficulty. Daughter with -- there is something regarding his daughter. Not to his physical health.
BY MR. CASSOT:
Q. But to hers?
A. Yeah.
Q. We don't need to discuss that.
A. All right, so -- and then the impression down below is urinary frequency. Follow up with UA, urine

Page 38

culture. Follow-up PSA. Follow-up treatment based on that. Really, essentially, that's what it is implying. And --
Q. What's number 2?
A. Yeah, that's what I'm getting. AFib. History. This one says history. And I'm just describing the medicines. He's on blood pressure medicine Norvasc, amlodipine. And then basically the medications.
And then memory loss associated with fatigue. Adult insomnia. Question: multifactorial. And then again that's medication he is on. Therefore intention. Follow up with -- and that's with the -- there is a doctor in New York for neuropsych testing.
Q. Do you know if he ever followed up for the neuropsych eval?
A. I think he was being seen there by -- and Carolyn might know that. Dr.?
Q. Unfortunately, Ms. Wiener's deposition has been taken. And I might have missed that opportunity to ask that question so I'm going to just leave it at that.
A. The answer is yes, by the way.
Q. And did you get any of the reports from the neuropsychologist concerning --

OBJECTION
foundation

Page 39

A. Yes.
Q. Are they included in your records?
A. No.
Q. And why is that?
A. They are in the records, but they weren't copied. Part of the reason why I answered that way is they are not my records. They are in the records of correspondence that were sent to me, but they are in our records -- they are in my records.
Q. Okay, are there any other records of any other physicians that were in your records that were not copied as far as you know?
MR. REILLY: Objection.
THE WITNESS: Yes. Yes, sure.
BY MR. CASSOT:
Q. Who else's?
A. David Blumenthal.
Q. Okay.
A. Which I have brought his notes.
Q. Yeah, I saw that.
A. I think there are some other physicians in New York as well.
Q. Okay.
A. You know, I think you just mentioned you are going to be taking his deposition.

Page 40

Q. Okay. All right, so I don't think it's necessary to read every single page of this, but is there -- at any point, did Mr. Wiener's concerns of memory loss ever abate with respect to the treatment notes that are in front of us?
MR. REILLY: Objection. What do you mean abate?
BY MR. CASSOT:
Q. Is there any point in which you were treating Mr. Wiener during the time frame that these notes cover where you did not acknowledge memory loss as part of your impression and plan?
MR. REILLY: Objection.
BY MR. CASSOT:
Q. We can go through it day by day. So let's do that.
The first note I showed you was 24288. The date was 4-29-11. Would you agree that memory loss was part of your impression and plan?
A. Yes.
Q. And, in fact, you had underlined memory loss, correct?
A. Um-uh.
Q. What is the reason for underlining that?
A. Well, that's just another way of highlighting

Page 49

THE COURT REPORTER: MPH?
THE WITNESS: MTHFR. MTHFR gene with positive homozygous, H-O-M-O-Z-Y-G-O-U-S. I'm not sure I can make out the next words.
BY MR. CASSOT:
Q. Okay. I want to go down under review of symptoms. You had circled loss of fatigue. Was there a reason you had circled loss of fatigue -- I'm sorry, not loss of fatigue. You had circled fatigue. Is there a reason that you circled fatigue?
A. Well, it's a common complaint. You know, it had been one of the complaints that he had, mild fatigue.
Q. Okay. Chest pain, that's circled obviously because of the discussion in the HPI?
A. Okay.
Q. Mental status change under neurological, you had that circled. Why is that circled?
A. Related to the memory.
Q. Okay. And what's next to that handwritten? It looks like --
A. Occasional instability.
Q. -- instability. That goes to the gait?
A. Yes. Yeah, that's right.
Q. And then psychiatric, you have confusion and

Page 50

memory loss circled.
A. Right. Well, he had moments where the confusion would concern him.
Q. Okay. In terms of when you do the review of symptoms, is that your objective evaluation of the patient or is that just patient complaint?
A. All patient complaints.
Q. So in other words --
A. Those are his symptoms.
Q. Those are his symptoms as reported to you?
A. Yeah, they are not documented medical conditions. They're symptoms.
Q. Okay. So how would a patient report to you gout?
A. That would -- down there where it says gout?
Q. Um-uh.
A. Podek (ph) would be a classic symptom of a large swelling with pain in the great toe.
Q. So that would actually -- rather than saying gout, if we were reporting based on the patient's symptom it would be pain in great toe, correct?
A. Yeah, and then you put gout as a potential, right.
Q. Okay. Would you ever circle something in the review of symptoms that you did not think was present?

Page 51

MR. REILLY: Objection.
THE WITNESS: No.
BY MR. CASSOT:
Q. It looks like on -- well, it continues on. The two 1612 goes on to page 2452. And if you look under impression and plan, it has chest pain underlined and then your handwriting under 1. And then two says memory loss, slash, and then what is after that?
A. That's the history of possible CVA.
Q. What does history CVA mean in layman's terms?
A. Well, question stroke. But I think that that has been noted that there is subsequently no evidence by scanning for that.
Q. Is that noted in your record?
A. Well, I think what we have noted is that there is no further indication that he had that.
Q. Can you show me where in the record it says that, where in the record that is in front of us?
A. Well, the record does not show that in any of the medical history. Subsequent history is absent from the history.
Q. So explain what you mean by what you just said.
A. There is no documentation of a stroke.

Page 52

Q. In the subsequent history.
A. Yeah. Yeah, so the subsequent notes, really it's absent from there.
Q. Correct.
A. Because you did not identify it by scan or CT.
Q. But on number 2, it says memory loss, slash. That's history of stroke, correct?
A. Yeah. And again we are not always perfect, so that is the issue, right.
Q. Doctor, I'm not here to criticize anybody. I'm just here to understand what is in the medical record.
So in terms of what is in the medical record, on February 16, 2012, what you wrote in the record was memory loss, history of stroke. Correct?
A. Right.
Q. Okay. And so when you are talking about a history of stroke, that's not discussing what goes on in the future. That's discussing what happened in the past?
A. Right.
Q. Okay, so based on an objective review of this entry on this medical record is it reasonable to understand if I read this medical record, that you

OBJECTION/MOVE TO STRIKE
p. 53:11-20
counsel colloquy

OBJECTION/MOVE TO STRIKE
p. 53:21-54:8
non-responsive

MOVE TO STRIKE
counsel's objection

MOVE TO STRIKE
counsel's objection

Page 53

were his treating doctor since 1998 and you wrote down memory loss, history of stroke, that Mr. Wiener did have a history of a stroke?
MR. REILLY: Objection.
THE WITNESS: There is a difference between a legal and a medical record. Let me explain.
MR. CASSOT: Actually, let me stop you right there.
And I would like you to read back the question.
MR. REILLY: He was answering the question.
MR. CASSOT: Not necessarily.
THE WITNESS: I'm answering the question.
MR. REILLY: Well, he should be allowed to answer the question. Then if you want to repeat it or rephrase it, we will.
MR. CASSOT: We will see.
MR. REILLY: I would like the witness to finish the answer.
Go ahead.
THE WITNESS: We are actually -- we have had recent coding discussions regarding what we put in the chart. The chart indicates what we suspect may be going on. And we put that down even if it's not definitive.

Page 54

So if we are concerned about that, we would place that as possible. I didn't put in the word possible. I should have, because that was an error.
But the following discussion under that indicates repeat neuro evaluation, needs follow-up MRI, in other words, the testing to identify whether or not that is true.
BY MR. CASSOT:
Q. Um-uh. Is any of that -- any of the follow-up testing or anything in the records that were produced to AXA? Any records indicating that stroke had been ruled out? Was that produced?
A. Well, I have a CT scan report that I can get that was negative.
Q. Okay, were any of the records that were produced to AXA -- I want you to assume that was produced to AXA as Exhibit 63.
A. No.
Q. Is there anything in Exhibit 63 that rules out the history of stroke?
MR. REILLY: Objection.
THE WITNESS: It was not -- as far as I can see, you did not receive that information.
BY MR. CASSOT:

Page 55

Q. Okay, so I want to go back to the original question that I asked that Mr. Wiener's counsel had asked that you be able to finish your answer. Now I'm going to ask you to answer my question, which was, Would an objective reading of this medical record advise the reader that in your belief Mr. Wiener had a history of stroke?
MR. REILLY: Objection. Objective reading of Exhibit 63?
THE WITNESS: The single note, yeah.
MR. REILLY: Of Exhibit 63.
THE WITNESS: I answered yes.
BY MR. CASSOT:
Q. Oh, you answered yes?
A. Yeah. Reading that single note, yes.
Q. Okay, reading that single note. All right.
And there is nothing in this record that was provided that indicates that the history of stroke was, in fact, ruled out?
A. Right.
Q. What is the next line? I couldn't even make that out. Number 3, I think.
A. The next line?
Q. Yes.
A. Oh, you mean --

Page 56

Q. 2452.
A. -- the next diagnosis.
Q. Yes, the next, under impression.
A. Homozygous MTHFR gene mutation.
Q. Okay, what is that?
A. It's a metabolic gene involved in the conversion of an enzyme -- of a compound called homocysteine into methionine, which is an amino acid that requires the addition of a single carbon methyl group that takes -- that's added to homocysteine to make methionine.
Q. Okay.
A. It requires folic acid as a cofactor that binds and is able to supply the methyl, single carbon methyl group. People who have a defect in that conversion have been hypothesized to have higher cardiovascular risks because it leads to excessively high levels of that homocysteine because of the lack of conversion to methionine.
Q. So you give him a vitamin B12 shot?
A. You give folic acid, actually. It turns out that it's a hypothesis and not proven.
Q. But because it's a hypothesis and you don't want to risk it, you go ahead and treat for it anyway?
A. Sometimes people overtreat it so that it

Page 65

might be esophageal reflux.
Q. Okay. Is there any -- was there any follow-up that you can recall concerning a GI assessment for esophogeal spasm?
A. I think if he recurred, we were planning on doing that when he had it.
Q. Okay. Then number 2, his memory loss remains intermittent, bothersome. And you indicated strongly recommend he follow-up with a sleep study as discussed.
A. Yes.
Q. And was there a sleep study done?
A. He had that done in New York, yeah.
Q. And did the sleep study resolve in any way his memory loss issues?
A. I think he actually -- I think they tried to use a BIPAP and he had trouble. But I could be wrong -- no, no. I'm sorry.
And, again, to simply answer, you know, to add something that is in the chart, not this information, but is in the bigger chart information from New York and his mental status testing, despite his memory loss, he never had evidence clinically of difficulty during conversations or any of the -- that indicated any memory issue.

Page 66

And he was tested and always had a completely normal mental status exam with excellent recent acute and remote memory. So there was never any findings of this. It was his own sense that he kept reporting he was bothered by.
Q. Okay. And those were reports that you continued to include within your medical records?
OBJECTION/MOVE TO STRIKE non-responsive
A. Because he always said, you know, I'm just bothered by this. Remember, in his 70s, he was extremely highly functional -- continued to travel, participated in meetings. He was doing things that most 50-year-olds might have difficulty with. So he held himself to an extremely high standard.
Q. I hope what you are saying is that people who are 70 shouldn't be president, because that would be really helpful right now, but I don't think that's what you mean.
A. Well, I think nobody here would argue that that's not a memory issue. But that's an example of not admitting. There is somebody who should admit, I can't remember.
Q. Yeah.
A. So that's the difference between humility, self-understanding, and the opposite.
Q. This divergence, we need to bring this back into the issues.
MR. REILLY: I'm not sure if I should be objecting or not.
THE WITNESS: And, fortunately, we are not deposing him.
MR. CASSOT: How much fun could that be.
BY MR. CASSOT:
Q. All right, so now moving on to the real issues that bring us here today. Moving on to the next encounter, September 26, 2012.
Now, you continue to reference the history of monoclonal gammopathy, but that's -- as I understand your prior testimony, that is because he would have had a finding of monoclonal gammopathy, but you believe that resolved.
A. Yes. But, again, past medical history --
Q. Is recorded?
A. -- is past medical history.
Q. Correct.
A. Yes.
Q. So I'm just trying to understand why it continues to show up. It shows up because it was in the past.
A. That's why he still is listed as having had a tonsillectomy. It may be there. I'm not sure.

Page 68

Q. He may not want to make that representation until --
A. But if you put in surgical history, even a tonsillectomy at the age of five will show up in your 80s.
Q. Okay. All right. Let's see if there is anything else I need to ask you about on that.
Then I don't really care about his sebaceous cyst. (After perusal of records.) All right, so I think we are pretty much done with the medical records. Let me ask you, then, a couple of other questions.
Have you done any epidemiology research?
A. Not formally, but I lecture in the school of epidemiology or the section of public health at Yale.
Q. Okay.
A. And I do participate in research articles where we review epidemiology. So, you know, it's part of my interest, but....
Q. Sure.
A. The answer is: I don't sit down and formally do the epidemiologic research per se.
Q. Okay. Have you ever done any research with respect to patient mortality? All-cause mortality, for example?

Page 69

A. Yes, certainly.
Q. In what context?
A. Well, usually within the context of what's called global burden of disease, origins of modern mortality in terms of noncommunicable disease that has accelerated the last 70 years and the causation for that.
Q. Okay. Have you done any research concerning the relationship between serum albumin's and all-cause mortality risk?
A. No, but I'm familiar with it.
Q. How are you familiar with it?
A. I have reviewed some of the research on that.
Q. What research did you review?
A. There is -- there are articles indicating a potential association between levels of albumin and outcome and all-cause mortality. There are also articles arguing that the exact definitive nature of this remains unclear.
Q. Okay. And, again, I think we kind of covered this earlier. You are not in a position as a medical doctor to have an opinion with respect to whether an insurance company's reliance on various labs is appropriate in the underwriting process?
A. Correct.

Page 70

MR. REILLY: Objection.
BY MR. CASSOT:
Q. Put differently, you are not an expert in insurance underwriting?
A. No, but I do have a perspective on using values clinically, which is the most relevant understanding in individuals how that impacts on long-term outcome.
Q. And that's an understanding of the clinical use of these.
A. Correct. Correct.
Q. And you would acknowledge that the clinical environment is different from the underwriting environment?
A. Right.
MR. CASSOT: All right, let's take a break, because I may not have any more questions. I just want to confer with my client and then I may be done. And then Brian can go and then he will be your witness.
MR. REILLY: All right.
(Off the record from 3:01 to 3:13 p.m., as a break is taken.)
MR. CASSOT: The record should reflect that I have completed my questioning of Dr. Boyd.

Page 71

MR. PALMERI: And I have no questions.
MR. REILLY: Okay, I have questions.
CROSS EXAMINATION
BY MR. REILLY:
Q. Doctor, if there was actually a true and actual history of stroke from Malcolm Wiener, would it be expected that any reasonable practitioner would have noted either CVA or stroke in the history in the medical records?
A. Yes.
Q. And is that noted in any of Mr. Wiener's medical documents in your file prior to that one single entry?
MR. CASSOT: I object to the form.
THE WITNESS: No.
BY MR. REILLY:
Q. Is it noted anywhere in Mr. Wiener's medical records that is Exhibit 63 after that one single entry that says CVA?
A. No.
Q. Does any other document in Exhibit 63 indicate that Malcolm Wiener had a stroke or a CVA other than that one writing?
A. No. No.
Q. Is there any evidence within Exhibit 63 that

OBJECTION foundation, undisclosed expert opinion

Page 72

Mr. Wiener had a stroke between his last visit in January 2012 and that visit where CVA is written?
A. No.
Q. What kind of record or test would constitute medical proof of a stroke or CVA?
A. A neurologic exam showing focal abnormalities, which he did not have (and I noted multiple times that he had no focal findings), a scan. And he had a negative CT scan, which I also noted.
And for the purposes of understanding how the record is generated, on occasion we think, could it have been? And instead of saying -- they always tell us never write rule out. That is a wrong diagnosis. You put that in if you think that may be part of it and then you go on to follow up. And that is really what that is meant to indicate.
Q. When you say that was what it was meant to indicate, what are you referring to?
A. There is a possibility that we need to -- instead of saying rule out, because we don't put those in records anymore, we say question. And I should have put a question mark there. Possible CVA. But I did not.
Q. All right, so I just want this to be very clear. I'm looking at the page of Exhibit 63 marked

Planet Depos
We Make It Happen

Transcript of Hallie Hawkins, Corporate Designee

Date: August 24, 2017
Case: Wiener -v- AXA Equitable Life Insurance Company, et al.

LEGEND
DESIGNATIONS BY COUNSEL

Plaintiff: Text in yellow

Defendant: Text in blue

Both Parties: Text in green

Planet Depos
Phone: 888-433-3767
Fax: 888-503-3767
Email: transcripts@planetdepos.com
www.planetdepos.com

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MALCOLM H. WIENER, Plaintiff,	)	Civil Action No. 1:16-CV-04019-ER
VS	)	
AXA EQUITABLE LIFE INSURANCE COMPANY, DAVID HUNGERFORD, AXA ADVISORS, LLC, and AXA NETWORK, LLC, Defendants.	)	

DEPOSITION OF: AXA EQUITABLE

BY AND THROUGH ITS

DESIGNATED REPRESENTATIVE
Hallie Hawkins

DATE: August 24, 2017

HELD AT: Morrison Mahoney LLP
One Constitution Plaza
Hartford, Connecticut

Reporter: Robin Balletto, RMR, LSR #230

okay? I know you're in a different role right now, so I want you to think about that perspective.

A I understand.

Q Thanks. So can you describe the reinstatement process for me?

OBJECTION
p. 18:4-21:21
relevance

A From what aspect?

Q From your role as chief underwriter, like when you would get involved, the beginning, and how you moved through reinstatements?

A A case would be referred to me, I would review the application, any possible MIB codes.

Q Go ahead.

A And then I would make a decision on whether I needed to order an attending physician's statement or not.

Q So let's break that down a little bit. How does a case get referred to you?

A It depends on when the policy was issued.

Q Okay. So what are the different categories of policies that could be issued timing wise?

A It depends. The timing is more in correlation with the system that is stored in -- some of our policies have been in force for a long time, so they are on a legacy system.

Q And if they're not on a legacy system, where

are they stored?

A They're stored on our current system, which is called N like Nancy, B like boy, A like Ann.

Q You said that it depends on if they're on the legacy system or this newer system how a case is referred to you?

A Yes.

Q So can you describe just the differences?

A The legacy system is in something called AWD.

Q What does that stand for?

A I don't know.

Q So if a case is referred to you and it's a legacy, an older policy, is this AWD system something that notifies you?

A The paid change person generally, and I don't remember on this case, but they generally would send you an e-mail saying you have a case in AWD, and then we would go in there and look at it.

Q What's a paid change person, or who?

A That would be -- in this case it was Sandra Huffstedler.

Q So that's a job role?

A I don't know her exact title, but she works in that department.

Q Was this case -- was this instance in the

A No.
Q So they're not underwriters, correct?
A No, they're not.
Q But do you work with them?
A Yes.
Q In connection with reinstatements?
A And pay changes.
Q Okay. What sort of tools do you use to evaluate reinstatement applications, and by tools I mean like do you have a software program that you use, or a computer system? Like how do you --
A I read the records.
Q Okay. What about like manuals or guidelines?
A After I review the records, I check our underwriting manual. There's also a life underwriting release.
Q Are there only -- is there only one life underwriting release in force at a time? Like would you only look at one particular, the latest one, or do you have a series of underwriting releases that you look at?
A I don't quite understand the question.
Q So a life underwriting release, what is that?
A Okay. So it is guidance on how to handle situations that are not included in the underwriting

OBJECTION
relevance
p. 22:8-23:1

manual.

Q And does that get updated?

A Yes, it does.

Q Where do you access the underwriting manual and the life underwriting release?

A The underwriting manual is on a -- I'll do the life underwriting release first. The life underwriting release is kept in a database called SharePoint.

Q And the manual?

A The manual is a manual called, at the time on Mr. Wiener's --

Q Reinstatement.

A -- reinstatement, was a manual called Gen Re, and that's a web based.

Q So you would go to a specific website to access it?

A Well, it's saved for me, but yes, correct.

Q Can you explain the impact of reinsurance in a reinstatement application?

MR. CASSOT: Object to the form.

BY MS. GUERTIN:

Q Do you understand what I'm asking?

A I can't -- it would depend on the case.

Q Okay. How about, what does FAC reinsurance

Q Could you estimate how many you were working on at a given time?

A I could for this one case.

S

OBJECTION
relevance
p. 26:1-29:20

Q Okay.

A I was working on one at that time.

Q Okay. So is that typical?

A Yes.

Q So generally speaking, you would be working on one reinstatement at a time?

A Yes.

Q You didn't have like a case load of multiple reinstatements you were working on at once?

A I did not have a case load of multiple reinstatements I was working on at once.

Q How long does the reinstatement process usually take?

A There is no way to quantify that. It just depends. A lot of it depends on how long it takes to get the records from the attending physician.

Q So that's the bottleneck, usually, the records?

A That's correct.

Q When you're evaluating a reinstatement, who do you typically speak with about the reinstatement?

A I don't understand your question.

MR. CASSOT: You beat me to it. Object to the form.

BY MS. GUERTIN:

Q So you reach out to the physician, correct, to request records?

MR. CASSOT: Object to the form. Go ahead.

THE WITNESS: I do not.

BY MS. GUERTIN:

Q You do not?

A No.

Q Who does?

A The pay change person assigned to the case, and they may use a vendor.

Q Can you give me an example of a vendor?

A I don't know the one that they use, but there's four or five vendors.

Q Is Parameds a vendor?

A Yes, that's correct.

Q Do you talk to -- do you reach out to the policyholder at all?

A No.

Q Do you reach out to their financial advisor that works for AXA?

A I could.

would also depend on the medical history of the proposed insured.

Q So how do you know -- what sort of training do you have to know what you're looking at in the medical records?

A I have been through medical training for most of my career. We are trained on everything that a medical person would need. We are trained on cancers, cardiac disease, hematology, neurology. Medical directors actually do the training for us. In addition I've taken courses.

Q And do you have to take continuing education courses?

A We have courses every year. It's not required, but we do do it. AXA requires it.

Q Do you have any certifications?

A Yes, I do.

Q What are those?

A I have an FLMI, which is a Fellow of the Life Management Institute, and I also have an FALU, which is Fellow of the Academy of Life Underwriting.

Q How did you get those certifications?

A I studied.

Q So is there a program that you had to take?

A It is self-study. There's manuals that we

read, and then we have to -- once a year they have a test.

Q So you sat for two tests?

A No.

Q Just one test?

A No. For the FLMI it's ten tests, and for the FALU it's an additional four, so you have to have --

Q Fourteen tests.

A Pretty much, yes.

Q And when did you get those certifications?

A I received my FALU in 2008, and my FLMI was before that, I would say, I think, 2007. I could be off a little bit by a year on the FLMI.

Q That's fine. Don't worry about that. And do you need to take any courses to maintain those certifications?

A No.

Q After you've done your review of a reinstatement application, say you deny the reinstatement application, can that decision be appealed by the insured?

A No. We don't have a formal appeal process.

Q So do clients ask for reconsideration anyways, even though there's no formal appeal process?

A I suppose they could informally.

application.

Q If you just turn the page. At the top of the page there's a reference to "paid up extended term." Do you know what that term means?

A Only at a high level.

Q Can you tell me?

A A person can have a whole life policy, and it's a non-forfeiture benefit on the policy.

Q What does that mean?

A That would mean if you had a policy, you could convert it to term and you wouldn't have to pay the premium anymore for a certain number of years.

Q So meaning they've already paid for the whole policy essentially?

A Not exactly correct.

Q Okay. Can you clarify?

A If there's cash value in the policy, and they don't want to pay a premium anymore, there's a non-forfeiture benefit in some policies, and I don't know by policy, but where you can actually not want to pay the premium anymore, and they will determine a death benefit, and they will turn the policy into a term policy.

Q You can put that aside. I'm going to show you what has previously been marked as Hungerford

Exhibit 31. Take a look at that. Do you recognize this document?

OBJECTION
p. 40:24-43:12
relevance

A Yes, I do.

Q What is it?

A It's a life underwriting release.

Q And is this a document that you refer to in your line of work?

A There's a more current version, I believe.

Q Okay. So this is an older version?

A That's correct.

Q Was this version in force at the time that Mr. Wiener's 2013 termination and reinstatement were being processed?

A I believe it was a 2011 document.

MS. GUERTIN: Let's go to that one.

(Plaintiff's Exhibit 52, Life underwriting release Bates stamped AXA001498 through 1502: Marked for Identification.)

BY MS. GUERTIN:

Q All right. Let me show you what's been marked as Plaintiffs' Exhibit 52. Do you recognize this document?

A Yes, I do.

Q Is this the more current life underwriting release you just referenced?

sentence says, Non-medical age and amount underwriting requirements. Can you explain what those terms mean?

A Yes. Age and amount underwriting requirements are what we obtain on new business.

Q Okay.

A And they give you some examples here, which would be an inspection report, a motor vehicle record, and financial data.

Q What kind of an inspection report?

A An inspection report is where we call the client, we ask questions, and then we contact a third party who knows about the client's financial history, and we could also do a search, a record search, a non-medical record search.

Q What kind of a third party would you reach out to about the financial history?

A I would not do that. Our vendor does that.

Q Your vendor?

A Yes. We have a vendor that does those for us.

Q Okay. Who is that vendor?

A We have a couple of them.

Q Okay. Do you know why a financial history is important?

MR. CASSOT: One thing is clear, when

you read the sentence you left out the part that says, "Generally should not be requested unless the risk presented." So these are things that are done in new business, not in reinstatements.

MS. GUERTIN: Okay.

MR. CASSOT: So you're welcome to continue this line of questioning, but just so we're clear, these things are not done in reinstatements.

THE WITNESS: That's correct. Generally, yes.

BY MS. GUERTIN:

Q Okay, good. So then what do you request for reinstatements if you're not looking for non-medical age and amount underwriting requirements?

OBJECTION relevance

A Generally I would ask for an attending physician's statement.

Q Is then the next sentence where it says, "Medical requirements, however, should be consistent with the reinstatement guidelines outlined in this document and those normally requested for new business, e.g., blood/urine, APS's, et cetera, if warranted." So what does it mean if warranted?

A I can give you an example.

Q Sure.

certain amount of time, and that differs by policy. The premium would be waived while the person was disabled.

Q And then LTCS?

A I believe that stands for the long-term care supplement.

Q Do you know what that entails?

A Yes, I do.

Q Can you explain?

A It's a rider on a policy, and the rider allows for the death benefit to be accelerated if the individual needs a long-term care.

Q Underneath that section there's a section for a number of days 121 to 180; do you see that?

A Yes, I do.

Q And here it splits, under age 70, and age 70 and up. Do you know why there is a split there?

A I did not write the guideline.

Q Okay. My question is, do you know why there is a difference between people under age 70 and people over age 70?

A May I read it for a moment?

Q Yes.

A I don't know for 100 percent sure.

Q Okay. What do you know about it?

A Generally as people get older their mortality risk increases.

Q So it has something to do with their mortality risk?

A That's correct.

Q Is there a difference in the analysis, in the underwriting analysis that you do, for someone that's 70 and up and is applying new business application versus a reinstatement application?

MR. CASSOT: Object to the form.

THE WITNESS: He objected, didn't he?

MR. CASSOT: But you still can answer.

BY MS. GUERTIN:

Q If you understand.

A I'm sorry, because he did I lost my train of thought. Can you ask me again?

MR. CASSOT: I warned you about that.

BY MS. GUERTIN:

Q So if someone over 70 applies for a life insurance policy and you do an underwriting review, is there a set of guidelines that you look at to determine whether to approve that application?

OBJECTION
relevance
S

A Yes.

Q And is that the same set of guidelines that you would look at to determine if someone over the age

BY MS. GUERTIN:

Q So if they had a rating E, D, C, V, or any of these others, they could be issued that sort of policy?

A New business.

Q Now, walk me through how you would use this with respect to a reinstatement?

A The same basic concept, but I would have to compare the current assessment with what the policy was issued at.

Q Okay. And if you refer back to this exhibit we were looking at before, 52, and the table that's on page 1500.

A Yes.

Q So is this what you would look at to determine whether reinstatement could be approved?

A Yes.

MR. CASSOT: I should state that classes and tables are essentially the same thing. The terms are used interchangeably.

BY MS. GUERTIN:

Q Classes and tables. I'm sorry, I don't understand what that means.

A I just said table B and C, it is also called class B and C. The terms are used interchangeably.

Q Okay. So on page 1500 of Exhibit 52 there's a section there that says current assessment. So when it says same rating as original, does that mean, for example, that at the inception of the policy they might have been a B, and now they're still a B?

A Uh-huh.

Q So you would approve the reinstatement according to this?

A That's correct.

Q If the policy was in force for five years or less?

A Yes.

Q Do you recall when you looked at Malcolm Wiener's reinstatements if he had the same rating at the time of the reinstatement as he did when the policy incepted?

A He did not.

OBJECTION
relevance

Q Do you recall the -- can you speak specifically about that from your memory, like what was his rating when the policy incepted, and what it was when you looked at it?

A From my recollection when the policy was incepted it was rated as standard non-tobacco rate.

Q Okay. So would that be on Exhibit 53 in the 100 to 140?

committee.

Q Are the people on the medical team medical professionals?

A They're doctors.

OBJECTION
relevance

Q Doctors, okay. So then -- so these are guidelines that AXA has created to change the guidelines that Gen Re puts out?

A Or add to.

Q Or add to, okay.

A Because perhaps information was missing or not addressed in the Gen Re guideline.

Q When would you refer to this document?

A Whenever I evaluated an individual who is age 70 and up.

Q For new business?

A For any type of business.

Q So it could be reinstatements as well?

A That's correct.

Q At the top it says, Senior Applicant Medical Checklist. When they use the term applicant, does that only apply to new business?

A No.

Q So that applies to reinstatements as well?

A Yes. An application is filled out for a reinstatement.

Q I see. Did you review this in connection with Malcolm Wiener's reinstatement?
A Yes, I did.
Q So just to go over it again. You mentioned low hemoglobin. Where is that on this list?
A That would be under 14, under two red flags.
Q It says, Male hemoglobin less than 13?
A I'm going from memory, it was 12.5.
Q You said low serum albumin?
A His, going from memory once again, was 3.5. That's number 2 on the first.
Q Memory loss?
A Yes. I would have considered that number six.
Q On this top part, Mild or worse dementia?
A Yes.
Q Those are the ones you could recall?
A He also had a gait, he was noted to have gait instability by his physician.
Q Where would that --
A I don't think that one was on here.
Q Okay. It references falls, but not gait instability, correct?
A I believe there was a fall in the records going from memory, but I can't say 100 percent sure

OBJECTION
p. 71:1-72:23
relevance

A Yes.
Q And they don't make decisions based off of those?
A No. It's just an alert that you need to investigate further.
Q So when we're talking about medical insurability for a reinstatement, can you explain like what the difference is between medical insurability for a reinstatement versus new business?
MR. CASSOT: Object to the form.
BY MS. GUERTIN:
Q What is the difference between the two?
A Essentially I go through the same process and come up with the same rating, but based on less evidence.
Q This is for a reinstatement?
A Right. Less medical evidence, because I'm not getting the Paramed and the labs, and there's a two-table tolerance. So if Mr. X was standard, and now he's a table B for reinstatement only, we would allow the standard, but if it was new business, Mr. X also applied for new business at the same time, then he would be issued a table B policy.
Q In your hypothetical he was standard when he applied for the first policy?

A That's correct. At issuance, yes.
Q So for --
A And that assumes that it's more than five years ago. I should clarify.
Q So for reinstatement you said you rely on less evidence.
A That's correct.
Q Can you elaborate again on that? What do you mean by that?
A If we go back to --
Q Exhibit 52.
A Yes, Exhibit 52, 99, 1499. If you read the first sentence under general overview, "Non-medical age and amount underwriting requirements, e.g., inspection reports, motor vehicle records, financial data, et cetera, generally should not be requested unless the risk presented suggests a necessity for these requirements. Medical requirements, however, should be consistent with the reinstatement guidelines outlined in this document, and those normally requested for new business if warranted."
Q Okay. So essentially all of the things detailed there would be required for new business, but for reinstatements only the APS?
A And depending on the case we could request

OBJECTION
relevance
p. 79:5-80:4

grandfathered?

A I'm not 100 percent sure, but it may mean that this policy was issued before the IRS regulation went into effect.

Q Would that impact your decision about reinstatement at all?

A No.

Q Do you know if reinsurance was involved in the decision to reinstate in 2007?

A I do not know.

Q Can you tell by looking at that?

A I cannot tell.

(Plaintiff's Exhibit 57, Reinstatement Application for Life Insurance Bates stamped MHW-001042 through 1045: Marked for Identification.)

BY MS. GUERTIN:

Q I'm showing you what's been marked as Exhibit 57. This is a copy of the 2008 reinstatement application. Do you recognize this document?

A I viewed it first during discovery.

OBJECTION relevance

Q During your prep for today?

A That's correct.

Q You've referenced on a few occasions that you would refer to the application, and if there were any yes answers, then you would look to the details; is

Objection
86:23-87:16
Relevance; lack of personal knowledge

that accurate?
A That is correct.
Q So if we look at this one as an example, here we have a few yes answers; is that correct?
A Yes, it is.
Q So why don't you walk me through what you would do in this case?
A I would make sure that all of the questions are answered, I would make note of any yes questions, and then I would read the details.
Q And what do the details here tell us?
A Would you like me to read them?
Q Yes, please.
A "Four incidents of atrial fibrillation all of which self-corrected by arrival or shortly after arrival at hospital. Doctor prescribed beta blocker."
Q So in this case, with these details, what would you do next?
A I would determine whether I needed an attending physician's statement or not.
Q Would you in this case?
A It would depend. I don't know what the death benefit was associated with this reinstatement.
Q So the value of the death benefit would dictate if you get the attending physician's

your evaluation of reinstatement?

A No.

Q Do you have any knowledge about the difference between the 2008 reinstatement and the 2013 reinstatement?

A I do not.

MS. GUERTIN: Now would be a good time for a brief break.

(Recess: 11:57 p.m. to 12:14 p.m.)

BY MS. GUERTIN:

Q Do you know when these policies were reinsured?

A At issue.

Q At issue, okay. So would reinsurance have been consulted for every reinstatement?

A No.

Q Why not?

A It would depend on which policies were being reinstated.

Q Why?

A Only policies that had facultative reinsurance on them would need to have reinsurance consulted.

Q Okay. So were all three of these policies facultatively reinsured?

A No.
Q Do you know which ones were?
A Not off the top of my head.
MS. GUERTIN: Let's mark this.
(Plaintiff's Exhibit 59, Document Bates stamped AXA001644 through 1654 with attached document: Marked for Identification.)
BY MS. GUERTIN:
Q If you look at what's just been handed to you as Exhibit 59. Do you recognize this document?
A Yes, I do.
Q And can you tell me what this document represents? Feel free to flip through it if you need to.
A This is the Gen Re Source Life Underwriting Manual, the AXA version.
S
OBJECTION
p. 95:5-96:3
relevance
Q And is it the entire manual?
A No, it is not.
Q Selected sections of the manual?
A That is correct.
Q Did you pick the sections to be included here?
A Yes.
Q And how did you choose those sections?
A These are the sections that I utilized in the

evaluation of Mr. Wiener's risk.

Q For the 2013 reinstatement?

A That is correct.

Q Can we look at this also with respect to the 2008 reinstatement application specifically regarding atrial fib. So you testified, let me get it up to -- so just going back to that, the 2008 reinstatement application talks about four incidents of atrial fibrillation. So where in this manual does it talk about atrial fibrillation?

A It is on page 1646 and 1647.

Q So can you tell me, what does this -- can you explain what this tells us here?

A Okay. There's different kinds of atrial fib. There is, the first category is prior atrial fibrillation when the person has been in sinus rhythm for more than a year.

Q What does that mean, in sinus rhythm?

A They haven't had any episodes of atrial fib. At least no known episodes of atrial fib, I should say.

Q So that's one category?

A That's correct.

Q The next category?

A Is if they're currently in atrial

fibrillation, or they have been in atrial fibrillation during the last year.

Q And then is there another category?

A Yes. There is chronic atrial fibrillation.

Q Okay.

A And that is on page 1647.

Q How do you --

A I'm not done. There is one more category. The paroxysmal atrial fibrillation is the other one.

Q And that's PFA for short?

A PAF.

Q PFA.

A That's correct.

MR. REILLY: What's at the top of the page cut off?

BY MS. GUERTIN:

Q Can you tell what's at the top of the page 1647 cut off? Is it the same as what appears at the bottom?

A I believe it is.

Q So how would you --

A Oh, I know what it says now. It says, Others rate as chronic.

Q Under current atrial fibrillation?

A No. On the top of page 1647.

(Plaintiff's Exhibit 60, Reinstatement of Life Insurance Bates stamped AXA000310 and 311: Marked for Identification.)

BY MS. GUERTIN:

Q Showing you what's been marked as Exhibit 60. Do you recognize this document?

A Yes, I do.

Q And what is it?

A It is the reinstatement for application that I reviewed.

Q So you've seen this before?

A Yes, I have.

Q Can you walk me through what you did once you received this application?

A Okay. I check the name to make sure that the system was correct, I looked at the occupation.

Q Why would you look at the occupation?

A There are certain occupations that can be rated, dangerous occupations.

Q Is historian a --

A No, it's not.

Q Not a dangerous occupation.

A No, but I still review it on every case.

MR. CASSOT: Can we go off the record for just a second?

MS. GUERTIN: Sure.

(Off-the-record discussion.)

(Plaintiff's Exhibit 61, Reinstatement Application for Life Insurance CT Form: Marked for Identification.)

OBJECTION
relevance

BY MS. GUERTIN:

Q Back on the record. Showing you what's been marked as Exhibit 61. Is it your understanding that this is the Connecticut form that was submitted by Mr. Wiener in connection with his 2013 reinstatement?

A It is my understanding.

Q And the one that we were just looking at that's marked as Exhibit 60 was originally submitted on a New York form; is that correct?

A That's what it looks like.

Q So when you took a look at this reinstatement, you were looking at Exhibit 61, correct?

A That is correct.

Q So now you left off saying you would look at -- you would verify that the information is correct.

A Yes.

Q And then what would you do?

A I would check the occupation, as I previously

A It says that he's having recurrent night sweats, it says that he's having a urinary retention problem, it seems like, difficulty with sleep, he's having vivid dreams, he's still fatigued. It's also noting memory loss, atrial fibrillation, hypertension, benign prosthetic hypertrophy, sleep apnea, history of sinusitis, a mitral valve prolapse. It's telling me he's had a surgical history of an appendectomy and a tonsillectomy.

Q Let's stop right there. Can you tell -- well, do you know what PMH means?

A Past medical history.

Q Okay. So now would those items that are listed there be the doctor's diagnosis, or would that be something that the patient told their doctor?

A It could be either.

Q How would you know?

A I wouldn't know. I wasn't a party to the conversation.

Q So it doesn't specify here?

A It does not.

Q So it's possible that Mr. Wiener might have reported that he had AFib, but that might not be the doctor's diagnosis?

MR. CASSOT: Objection.

THE WITNESS: I wouldn't know. OBJECTION relevance

BY MS. GUERTIN:

Q What did you say BPH stands for?

A Benign prosthetic hypertrophy.

Q And what is that?

A It's basically an enlargement of the prostate so it's difficult for the person to urinate.

Q And what is MUP?

A It's MVP, mitral valve prolapse.

Q What's that?

A It's one of the valves that's in your heart, and it's kind of flappy, floppy.

Q When it shouldn't be?

A Yes.

Q So did any of this information impact your assessment?

A Yes.

Q How so?

A The memory loss, the sleep apnea, the atrial fibrillation, and the hypertension notation just alerted me to the fact that I would have to keep an eye on his blood pressure through the rest of the review of the APS.

Q And then it looks like, what does habit/SH mean?

Objection

Non-responsive

Q Not yet?

A And then the memory loss, and the intermittent AFib, atrial fibrillation. 10/28/13, page 2468, diagnosis, atrial fibrillation, Patient with MGUS, chronic memory, difficulties AFib with concerns with difficulty with episodic memory issues.

Q Can you tell me what the -- under diagnosis it says atrial fibrillation, primary encounter diagnosis. What does that mean?

A I'm not sure what the doctor meant here.

Q Does the pulse rate have anything to do with AFib?

A It can.

Q And what correlation?

A So it's very rarely caught when they listen to the pulse, but it would be irregular and elevated.

Q And what's an elevated pulse?

A Depending on the person's baseline, but generally somebody who has a pulse over 100, but it's depending on the person.

Q Here in the paragraph at the bottom of this page, kind of in the first third it says, "He has had one occurrence with AFib with PR to 90." Does that indicate -- do you see that?

A Yes, I do.

Q Is PR pulse rate?
A No, it's not.
Q What is it?
A If we could go back to the EKG, I could show you what it means.
Q Okay, sure.
A It's not related to this, but it would be a way for me to show you what PR means.
Q Okay. What page are you looking at?
A I am looking at page 2453. When you look at an EKG, you see this first little --
Q Bump?
A Yes. The beginning of the bump is P, and the end of the bump is R, and a measurement of that helps determine if the person has atrial fib. It's not on this EKG.
Q Okay. But it's a measurement that they can take?
A Yes.
Q So here they're saying recurrence of AFib with PR to 90. What does that mean?
A I need to read it for a second.
Q Sure.
A This is speculation on my part, but I believe that the PR measurement, because I can't see the EKG

which is zero risk factors, which is a flat extra of $2 per thousand of coverage. So that's different than a table rating.

Q What does that mean?

A Okay. So instead of it being a percentage, so a one table rating is 25 percentage extra on the premium.

Q Okay.

A This is a flat extra. So for every thousand dollars of premium, we would add $2 -- I mean, every thousand dollars of death benefit, we would have $2 to the premium per thousand.

Q I see. So then did he have any of these risk factors for progression for MGUS to myeloma?

A From what I saw, he did not, other than the anemia, but his hemoglobin was not below 10, and I considered him asymptomatic even though I wasn't 100 percent sure he was asymptomatic, because he had only had a -- the recurrent respiratory infection, so I gave him the benefit of the doubt.

Q Back up a little bit, sorry. We were talking about this risk factors section here, and then you started to talk about the hemoglobin. Did you jump back up to the top of the page?

A Yes. That's required criteria, I'm sorry.

Q Okay. So required criteria, serum M protein, what's that?

A It's a protein that they -- in the SEP panel that they use.

Q Was that involved here?

OBJECTION relevance

A No.

Q So you said asymptomatic?

A He wasn't 100 percent asymptomatic, but I considered him asymptomatic, because I wasn't sure what was causing those recurrent respiratory infections.

Q Okay. And then anemia, is that what you -- did you consider him anemic?

A No, I did not, because his hemoglobin was greater than ten.

Q So you're saying under the MGUS rating you gave him the zero risk factor, which would give you the $2 per thousand of coverage?

A Yes, I did.

Q So how did that play into the assessment of the reinstatement application?

A That would have been equal to about 15 debits or a half a table.

Q So the dollar values that are listed here --

A There's a conversion.

ROUGH ASCII -- NOT CERTIFIED

N O T I C E

This transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT. It contains raw output from the court reporter's stenotype machine translated into English by the court reporter's computer, without the benefit of proofreading. It will contain untranslated steno outlines, mistranslations (wrong words), and misspellings. These and any other errors will be corrected in the final transcript. Since this rough draft transcript has not been proofread, the court reporter cannot assume responsibility for any errors therein. This rough draft transcript is intended to assist attorneys in their case preparation and is not to be construed as the final transcript. It is not to be read by the witness or quoted in any pleading or for any other purpose and may not be filed with any court.

LEGEND
DESIGNATIONS BY COUNSEL

Plaintiff: Text in yellow

Defendant: Text in blue

Both Parties: Text in green

DEPOSITION OF HALLIE HAWKINS, VOLUME 2

OCTOBER 25, 2017

(Commenced: 11:17 a.m.)

THE VIDEOGRAPHER: Here begins Tape Number 1 in the videotape deposition of Hallie Hawkins, Volume 2, in the matter of Malcolm H. Wiener plaintiff versus AXA Equitable Life Insurance Company et al. defendants in the United States District Court Southern District of New York, Case Number 116-CV-04019-ER. Today's date is October 25, 2017. The time on the video monitor is 11:17 a.m. The videographer today is Kristin Zarnestske representing Planet Depos. This video deposition is taking place at the firm of Morrison & Mahoney at One Constitution Plaza, Hartford, Connecticut. Would counsel present please identify themselves for the record.

MR. REILLY: Lawrence Reilly for the plaintiff.

MS. BIKAKIS: Nicole Bikakis the plaintiff.

here is that --

Q Answer the question that I posed to you first,

and then I'll ask you to explain.

A All right. Can you ask me one more time?

Q Yes. When you say that it could lead to a

decline or that it generally leads to a decline, that

implies that it might not lead to a decline; isn't that

correct?

A Yes.

Q So tell me circumstances under which it would

not lead to a decline.

A If somebody had a low albumen, but the next

value came up, then we probably would not decline. So for

example, if somebody was at 3.6 and five months later they

went back to the doctor and they were now at 3.9, we

wouldn't decline.

Q So a low albumen level that then goes up, you

would not decline?

A Yes, but if albumen levels are trending down, we

would decline.

Q Okay. Do you remember what the date of the last

albumen reading was --

A No.

Q -- that you had in your records when you made your decision on reinstatement of Malcolm Wiener's policy?

A No.

MR. REILLY: Why don't we just take a moment break. I need to get some documents, and we're probably better doing that off the record.

THE VIDEOGRAPHER: The time is 11:30 a.m. We're going off the record.

Off the record: 11:30 a.m to 11:35 a.m.

THE VIDEOGRAPHER: The time is 11:35 a.m. We're back on the record.

BY MR. REILLY:

Q Ms. Hawkins, we took a few minutes off the record to get deposition exhibits in front of you?

A Yes.

Q So you have in front of you Gary boid's records which are marked as Exhibit 63?

A 63 is correct.

Q We have in front of you the AXA document concerning what is this?

A That's the underwriting manual.

S

OBJECTION
relevance
13:23-14:3

Q Underwriting manual Exhibit 59 and that's only excerpts right?

A Only excerpts that's correct.

Q And your notes that's marked Exhibit 62 it looks like?

A Yes, that's correct.

Q So I think the last question I had asked you pertained to the date of the last albumen level test --

A Yes.

Q -- that you based your reinstatement evaluation on. Tell us the date of that and tell us where you're finding that, please?

A Exhibit -- Plaintiff's Exhibit 63 in laboratory results dated May 8, 2013, the serum albumen is reported at 3.5.

Q Okay. And according to Exhibit 59, what is the level that they're looking for?

A I'm reading number 2, albumen 3.8 or less.

Q And is that a decline or red flag or concern?

A It's usually a decline.

Q What was the date that you were performing your analysis for the reinstatement application?

A I don't remember.

Q Can you give me some rough idea?

A It was -- not really. It was either late 2013

or early 2014, but I cannot remember at this time.

Q Okay. So I believe the policies were terminated in December of 2013. So would that indicate that your reinstatement analysis was performed in the early months of 2014?

A To the best of my memory, but I can't remember right now.

Q Okay. All right. So the documents will advise us about that maybe as we go along. So you were relying on an albumen test that was from May of 2013?

A Yes.

Q If you knew that an applicant for reinstatement was taking testosterone supplements, would that affect your analysis on any of these points including albumen levels?

A We have guidelines regarding testosterone, but I don't have them in front of me.

Q Do you know what they are?

A Not off the top of my head I don't.

Q I think I just asked you this. Are you aware of of any context between testosterone levels and albumen levels?

A No, I'm not.

Q Do you know if the guidelines speak to that at

tests.

Q But on a new application, I understood you to say that you would send out somebody for an insurance examination?

A That's for new business only. We don't require that on a reinstatement.

Q Okay. So if a person is applying for a reinstatement, is there any circumstance under which AXA would require them to have any kind of blood test at all?

MR. CASSOT: Object to the form.

A Not that I -- not to my knowledge. Wait can you say that one more time? I'm sorry?

MR. REILLY: Can you read that back?

(The last question was read by the Court Reporter.)

A Not from a vendor, so where we were talking about where the examiner goes out.

BY MR. REILLY:

Q I don't understand your answer.

A Okay. We were talking a about the difference between new business and pay change which -- reinstatement, I'm sorry.

Q Reinstatement, thank you.

A Yes. All right. For new business only, we send an examiner out, but we do not do that for reinstatement. So it's two different --

Q I understand that.

A -- requirements. Okay.

Q So my question is: Is there any circumstance when there is a reinstatement application where AXA would require a blood test whether it's done by a vendor or done by the doctor or done by the man on the moon, it doesn't matter, any circumstances?

A I can't speak for every Underwriter at AXA, but we're not supposed to. Can I say that an Underwriter at AXA has never -- has ever sent somebody out? Yes, they could have, but I would not.

Q And you trian --

A And that is not the guideline.

Q You train underwriters?

A Right, but some have been there before I started training, so...

Q I guess let's just to bring this home.

A Yes.

Q If you have blood tests from somebody applying

9 for a reinstatement and that blood test is a year old, and
10 you've told me that if -- if their albumen level dipped
11 below the acceptable level, but then subsequently came up
12 to the acceptable level, that you would not decline?
13 A I may not decline, yes.
14 Q So if the only data that you have is a year old,
15 do you do anything to find out what the current numbers
16 are?
17 A No.
18 Q Because the person could be in perfect health,
19 right?
20 MR. CASSOT: Object to the form.
21 BY MR. REILLY:
22 Q And you don't know?
23 MR. CASSOT: Object to the form.
24 BY MR. REILLY:
25 Q Is that correct?

S

OBJECTION
relevance
23:8-24:24

1 MR. CASSOT: Object to the form.
2 A I can't read the future. I only have the
3 evidence as presented in front of me.
4 BY MR. REILLY:
5 Q Right. I'm not asking you to read the future.
6 I'm asking you to read the present when you are there

reading the records. So if the record that you have is a year old, do you do anything to update the data in that record to find out what the actual current medical status of that person is?

A No.

Q So if the data that you get from the doctor is a one-year-old or 17-month-old blood lab, that's what you're going to rely on?

A Yes.

Q Even though their numbers, at the moment that you're actually performing your analysis, the numbers might be stellar, they might be above all levels that are required, it doesn't matter to you?

MR. CASSOT: Object to the form.

A I have no idea if that happened or not. There's no way I could read that, know the future.

BY MR. REILLY:

Q Okay. Well, let's get into that. In this particular case, you knew the name and address of Malcolm

Wiener's treating physician, right?

A I knew it was Dr. Barry Boyd, yes.

Q And I think the reinstatement application provided you with Mr. Boyd's address in Greenwich. Do you

where an underwriter makes a mistake in reading or interpreting medical records?

MR. CASSOT: Object to the form.

A We talk to the underwriter. We let them know about the mistake so it's not repeated.

BY MR. REILLY:

Q How often does the audit procedure find mistakes

by underwriters?

A Our -- I don't have exact numbers, but our accuracy rate for the month of August was 98.4 or 5 percent. And we reviewed 3 -- I'm sorry, 240 -- approximately 240 cases

Q And that's all new business, right?

A Yes.

Q I guess we should clarify. When you say the accuracy rate was 98.4 or 5 percent, that is the auditors reviewing the medical records to see if they agree with the underwriter's review of the medical records?

A That is correct.

Q At any point are the doctors who created those medical records contacted to see whether they agree with the auditors or the underwriters?

A Definitely not.

17 Q And you said definitely not. Why is it
18 definitely not?
19 A Well, because we don't want to go back and talk
20 to a doctor after we've already -- most of these cases
21 have been issued. So most of the time when somebody makes
22 a mistake, it's in favor of the client. So for example,
23 somebody -- we issued a policy at our best class, and they
24 should have been standard. So we don't want to take the
25 policy back from the client, either, because we rated it

1 at the wrong rate. So we would definitely not contact the
2 doctor.
3 Q Okay. Do you know if AXA has ever been
4 contacted by an insured where the insured asked them to
5 contact the treating doctor?
6 A I can't answer that question.
7 Q Would you feel that an underwriter appropriately
8 contacted the doctor if the client contacted the company
9 or the company's agent and encouraged them to contact the
10 treating doctor?
11 A I can't answer for every underwriter. So I
12 don't know.
13 Q But how about for you? Do you think it would be
14 appropriate for you to contact the treating doctor under

OBJECTION
relevance
foundation

those circumstances?

A If the agent contacted me?

Q Right.

A Is that what you're asking me?

Q Well, the first question would be: If the client contacted either AXA directly or the agent and encouraged AXA to reach out directly to the treating physician, do you think it would be appropriate for the underwriter to then contact the treating physician?

A No.

Q Even though the client has consented to it and

encouraged it?

A Because we cannot identify over the phone that Mr. Smith is really Mr. Smith. So we don't know if the person giving permission is Mr. Smith.

Q So you're saying you think that somebody could fraudulently contact AXA and ask you to contact a stranger's treating physician in connection with their application for reinstatement of their life insurance policy?

A Yes.

Q Has that ever happened?

A I don't know, but people commit fraud all the

time.

Q And AXA can't concede of any fraud prevention steps that they might take to ensure that that hasn't happened?

MR. CASSOT: Object to the form.

A A written request.

BY MS. BIKAKIS:

Q A written request from the client?

A With his signature.

Q So if the client submitted something in writing encouraging that to happen, let's say writing or an email, would you then deal it appropriate to reach out to the treating physician?

A Only in writing, not in email.

Q Has AXA ever advised their clients that they would accept such a request from the client?

A That's generally worked out between the agent and the client.

Q Do the agents know that they're supposed to encourage clients to put that in writing?

MR. CASSOT: Object to the form.

A If they call the underwriter, the underwriter would tell them to have Mr. Smith send a letter?

Q Okay, of unknown significance reported by a doctor, and you don't know how long he's had it. Did I interpret that correctly?

A Yes.

Q I'll be an underwriter by the time this is done.

Next is 347 SZ#.

A That is a cerebral incident.

Q What is a cerebral incident?

A It could be a transient ischemic attack. It could be a cerebral vascular accident or what you might call a stroke.

Q And tell me again what does S mean.

A That means that I suspected he had a stroke or some type of cerebral vascular accident, but I didn't have enough information in file. It's equivalent to the K. I don't know the exact details.

Q Z you say reported by a doctor?

A Yes.

Q Pound # means you don't know when it happened?

A Or if there was more than one. I just didn't have enough detail. So the pound # means we don't have enough details to tell you more basically.

Q We'll come back to that.

18 What does 157 KZ# mean?

19 A I'm going from memory, but I think it's related

20 to the MUGIS, the mono COLONAL gammopathy

21 g-a-m-m-o-p-a-t-h-y of uncertain significance.

22 Q Back to 208 SZ#, you did not remember that?

23 A No, I do. That's a memory loss suspected.

24 Q Would you agree with me that as a result of

25 these MIB codes that you reported, that Mr. Wiener has

S

Objection

60:24-61:14

Improper expert opinion

Speculation

Foundation

Lack of personal knowledge

1 been rendered uninsurable?

2 A No.

3 Q You disagree?

4 A Yes.

5 Q Why?

6 A Because any other insurance company that he goes

7 to has to investigate all these codes, which means that

8 they need to get these records from whoever his attending

9 physicians is.

10 Q Where are you getting that? Says who? Who says

11 they have to investigate further?

12 A The MIB rules and regulations. It's in the MIB

13 handbook. It's clearly states you can't make an

14 underwriting decision based off the codes.

15 Q Did Mr. Wiener have any MIB codes when you --

16 pardon me. Withdrawn.

17 Did Mr. Wiener have any MIB codes prior to your

18 reporting of these codes?

19 A I don't know.

20 Q And is it your belief that these codes were

21 entered -- withdrawn -- -- when did you enter these in

22 you're saying please report these, and the date of the

23 email is March 12 of 2014?

24 A I didn't report them, so I don't know what day

25 they were reported. That's the day that I asked that they

1 be reported.

2 Q Okay. Do you know what materials were sent off

3 to the reinsurance company in connection with her Mr.

4 weiner's application for reinstatement?

5 A I do not. Somebody else did that for me.

6 Q Do you have any idea what records are supposed

7 to be sent?

8 A The attending physician statement from Dr. Boyd

9 and also Exhibit 61, the reinstatement application for

10 life insurance.

11 Q Anything else?

12 A I can't speak to what else was in the file at

13 this time, but everything in the file -- most of these

things in the file should have been sent.

Q Are your notes sent over to the reinsurer?

A No.

Q Are your MIB codes sent or over to the reinsurer?

A No. They check them themselves.

Q Do you ever speak with the reinsurance people about a reinstatement application?

A I have not.

Q Did you in Malcolm's case?

A Not to the best of my recollection.

Q What was the name of the reinsurance company for

Malcolm's policies? Do you know?

A I believe it was RGA, but I'd have to review the records to confirm that.

Q Do you know if all three policies were reinsured?

A I believe only one was, but I don't have my notes in front of me. There's a -- in the evidence, there's a screen shot with that information.

Q And do you know if you had any communication with RGA or any reinsurance company concerning Malcolm Wiener's application?

Q Miss Hawkins, I want to pick up close to where we LEFT off, and that is with the submission of Mr. Wiener's medical records to the reinsurance company. Do you recall testifying about that?

A Yes. I had asked that they be sent to reinsurance.

Q I'm showing you Exhibit 61 which Again is Mr. Wiener's reinstatement application, the second page of which contains the authorization to obtain health insurance. Is there anything in that document that authorized AXA to send Mr. Wiener's personal medical information to a reinsurer?

OBJECTION
relevance

A I need to review it.

Q Please.

A Right here it says, "I/we understand that the information obtained will be used by the company's to determine my, r, eligibility for life insurance coverage and such other uses specified in accordance with the

underwriting practices attached to this application."

THE VIDEOGRAPHER: Excuse me. You need your mic on.

THE WITNESS: do you need me to repeat it?

THE VIDEOGRAPHER: No.

BY MR. REILLY:

Q And you believe that authorized sending Mr. Wiener's medical documents to a third-party company?

A Yes.

OBJECTION
relevance

MR. CASSOT: Object to the form.

BY MR. REILLY:

Q But you do not read the HIPAA authorization as allowing you to pick up the phone and call Dr. Boyd?

A That's correct.

Q Let me show you Exhibit 59 which contains I think the second page AXA document 001645. It's called the senior applicant medical checklist ages 70 and up. Were you a part of the process whereby this list was created?

A No.

Q Do you know when that was instituted?

A I don't know exactly when.

Q Give me your best understanding about when it was instituted.

A Somewhere between 2010 and 2012.

Q Was there anything like the senior checklist in place before 2010, 2012?

21 A Usually it is put in the system and somebody in
22 pay change alerts me that the case is in the system.
23 Q All right. And has it been assigned to you or
24 do you get to choose which one you want to look at?
25 A No, it's assigned.

1 Q Who assigns it to you?
2 A The pay change representative.
3 Q And do we know who that is in this case?
4 A Sandra [HRUF].
5 Q So once the matter is assign to you, you're
6 alerted electronically, some kind of e-mail or?
7 A Yes correct.
8 Q Equivalent of email?
9 A Uh-huh.
10 Q Do you look at a paper file or electronic
11 file?
12 A In this case I believe it was electronic.
13 Q All right. When is your decision due from
14 underwriting on that reinstatement application?
15 A We don't have a due date. I am supposed to
16 review the reinstatement application and notify the pay
17 change rep of what I need. And then they handle it until
18 the requirement of what I need comes back. And then I'm

OBJECTION
relevance
72:13-73:13

supposed to review it and let the pay change rep know my decision.

Q Okay. So in this case, you use the phrase what you need?

A Right.

Q In this case, what did you need?

A The doctor's records.

Q Okay. And you people call that the --

A APS.

Q -- attending physician statement, APS?

A Yes, that's correct.

Q In this this case the APS was a photocopy of Dr. Boyd's records, correct?

A I'm not sure how they got it, but it looks like a photocopy.

Q Okay. What else could it be?

A I don't know, but it could have been electronically --

Q Okay. It's a copy?

A Right.

Q All right. There are times when an APS comes to you in the forms of an actual letter written by the doctor; is that correct?

say assessment and then list impairments.

Q So you're looking for other data in the records to support the conclusion that this is an actual medical diagnosis as opposed to what the patient said?

A I could, yes, but sometimes we don't know.

Q Do you just assume that everything that is not in quotes and not directly ascribed by the doctor to the patient, do you assume that everything else is from the doctor?

A Yes.

Q Have you ever had occasion to consider an application either a new business or reinstatement where you saw preexisting MIB codes and then you looked at the medical records and disagreed with MIB codes?

A Yes.

Q How often does that happen?

A Very rarely.

Q If a patient is -- withdrawn.

If a client is reported to the MIB has having had a stroke, does that render that client uninsurable?

S
Objection
Improper expert opinion
Foundation

A No.

Q Does it render the client practically uninsurable?

S
Objection
Improper expert opinion
Foundation

A No.

Q Can you envision a circumstances where a life

insurance company would issue a life insurance policy to someone who has reported to have a stroke?

A Yes.

Q Have you ever seen that?

A Yes.

Q Which company were you with?

A If -- we can actually insure somebody who's had a stroke after a certain amount of time.

Q What time?

A I'd have to look at the manual.

Q Take a look at the documents in front of you and tell me if you can answer that question.

A I just need a moment. Yes, I can answer that question.

Q Please.

A I am looking at exhibit --

Q Exhibit 59?

A Exhibit 59.

Q And the page is what?

A And page number AXA 1649. Depending on the type of of stroke, at age -- after one year they could have a rating of -- a table rating.

Q Which would be plus points on that table that we looked at earlier, right?

A Plus debits, yes, that's correct.

Planet Depos
We Make It Happen

Transcript of Sandra Huffstetler

Date: August 30, 2017
Case: Wiener -v- AXA Equitable Life Insurance Company, et al.

LEGEND
DESIGNATIONS BY COUNSEL

Plaintiff: Text in yellow

Defendant: Text in blue

Both Parties: Text in green

Planet Depos
Phone: 888-433-3767
Fax: 888-503-3767
Email: transcripts@planetdepos.com
www.planetdepos.com

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MALCOLM H. WIENER,

Plaintiff,

vs. Case No. 1:16-cv-04019-ER

AXA EQUITABLE LIFE INSURANCE COMPANY, DAVID HUNGERFORD, AXA ADVISORS, LLC, AND AXA NETWORK, LLC,

Defendants.

DEPOSITION OF: SANDRA HUFFSTETLER

DATE: August 30, 2017

TIME: 11:10 a.m.

LOCATION: 15720 Brixham Hill Avenue
Suite 300
Charlotte, North Carolina

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

said? I'm sorry.

THE WITNESS: If the form was in good order.

MR. CASSOT: In good order. Thank you.

BY MS. GUERTIN:

Q. If it wasn't, what would you do?

A. We would write out for the omitted information.

Q. Like reach out to the client?

A. Yes. We would mail a letter to the customer.

Q. What does AWD stand for, if you know?

A. I don't know.

Q. Do you know what it is?

A. Yes. Our imaging workflow system.

Q. Is it a computer program of some sort?

A. Yes, it's on the computer.

Q. Okay. And how do you use that system?

A. That's where we -- that's where we get all of our requests in the system and how we process and move work between the reinstatement area and the Underwriting Department, and we add our notes and comments for each case.

Q. So it's between departments?

A. Yes.

Q. Do you know what TAI stands for?
A. No.
Q. Okay. Do you know what that is?
A. Yes.
Q. Can you describe it for me?
A. That shows whether a policy is reinsured or not. It's a reinsurance system.
Q. Reinsurance info?
A. Yes.
(Previously Marked Exhibit No. 60, 12-18-13 AMIRA Reinstatement Application, was referenced)
BY MS. GUERTIN:
Q. Great. I'm going to show you what was previously marked as Plaintiff's Exhibit 60. Take a look at this for me.
A. Okay.
Q. Do you recognize this document?
A. Yes.
Q. Okay. Can you tell me what it is?
A. It's our Reinstatement Application, the AMIRA form.
Q. And just for the record, this is the application dated December 18th, 2013.
Can we go off the record for a second?
(Off-the-record discussion)

OBJECTION
relevance
p. 17:13-19:9

BY MS. GUERTIN:

Q. So what we just discussed is that this Reinstatement Application is the New York form. Is that correct?

A. Yes.

Q. And that Mr. Wiener later filled out a form dated December 23rd. That was the Connecticut form. Correct?

A. Correct.

Q. And these are substantially the same, so I'm going to ask you some questions about this because this is what we have today in front of us. Okay?

A. Okay.

Q. Did you review this Reinstatement Application?

A. Yes.

Q. Okay. And can you tell me what you --

MR. CASSOT: Hold on a second. Is anybody on the phone?

I just got a text from Eileen that they all lost the connection.

(A break transpired)

BY MS. GUERTIN:

Q. So back to Exhibit 60, we are looking at

this Reinstatement Application. What did you -- you said you reviewed it. Correct?

A. Correct.

Q. Okay. What did you review?

A. I reviewed the policy numbers and the insured's name and compared it in our system to make sure that it was the correct policy numbers being requested and that the form was completed accurately and all details were provided.

Q. Okay. And was everything accurate, to your recollection?

MR. CASSOT: Object to the form.

BY MS. GUERTIN:

Q. Do you recall if you needed to reach out for additional information?

A. I don't recall.

Q. Besides the fact that the form is wrong.

A. I don't recall.

Q. When you get an application like this do you have to input information into a system?

A. No.

Q. No? Okay. What did you do with the application at that point?

A. I actually -- I believe I would have forwarded it to Underwriting.

OBJECTION
relevance
p. 19:19-20:3

application.

A. Correct.

(Previously Marked Plaintiff's Exhibit No. 52, Life Underwriting Release No. 11-05, was referenced)

BY MS. GUERTIN:

Q. So let me show you what has previously been marked as Plaintiff's Exhibit 52.

MS. GUERTIN: And for the benefit of my client, this is tab 22 in your binder, Carolyn.

BY MS. GUERTIN:

OBJECTION
relevance
p. 46:3-47:11

Q. Do you recognize this document?

A. No.

MR. CASSOT: The entire document, or do you want to go to a specific page and ask if she recognizes that page?

BY MS. GUERTIN:

Q. Okay. Do you recognize -- on the second page of the document do you recognize the table that's included there?

A. Yes.

Q. Okay. Is this table what was in effect at the time of Malcolm Wiener's reinstatement application?

A. Yes.

Q. Okay. How would you have seen this

table if you did not receive this Life Underwriting Release?

A. We have a service operation procedure manual.

Q. What is that?

A. It's -- how do I explain? It just shows us how to process reinstatements.

Q. Okay. And that's not the documents that we were previously looking at as Exhibit 50 or 51?

A. No.

Q. But it would contain this chart.

A. Yes.

Q. Okay. You have never seen this Life Underwriting Release before?

A. No.

Q. Okay. So it's not something you would refer to?

A. No.

Q. But looking at the chart, it seems -- is it accurate to say the difference between this chart and the previous chart we were looking at is that this one does have riders and features in certain rows?

A. Yes.

Q. Okay. So in this case, do you recall --

65 percent.

Q. 65 percent maybe? Okay. Can you recall -- Okay. That's fine.

Do you know -- not with respect to this exhibit that's in front of you, but do you know what "Paid up extended term" means?

A. It's a whole life policy that has value that when a policy is not paid it can go under -- the value on the policy can purchase additional insurance to keep the policy in force under the paid up extended term.

Q. Do you know which, if Malcolm Wiener's policies were paid up extended term or non-paid up extended term?

A. They were non.

Q. They were non-paid up extended term. And how does whether they were paid up extended term or non-paid up extended term policies impact reinstatement?

A. I mean, based on our guidelines, they could be reinstated.

Q. Could they not be reinstated if they were paid up extended term?

A. Yes.

Q. So can you describe the difference for

me?

A. So if you have policy premiums that were past due five years or more, we couldn't reinstate them, even if was it was a under PUXT.

Q. Paid up extended term. Okay.

(Plaintiff's Exhibit No. 69, December 2013 Email Chain Between Henry Lewer, Toniann Fragala and Others, was marked)

OBJECTION
relevance
p. 53:5-56:24

BY MS. GUERTIN:

Q. I'm going to show you what has been marked as Exhibit 69. This is an email chain that is Bates numbered AXA 002559 through 2561.

MS. GUERTIN: And this is under tab 5 in your binder, Carolyn.

BY MS. GUERTIN:

Q. Take a minute. Do you recognize this email chain?

A. Yes.

Q. Okay. If you look on the second page of the document, there is an email from Henry Lewer. It's the one dated December 23rd, 2013 at 11:17 a.m. Do you see that?

A. Uh-huh.

Q. He is emailing you. And it says: "Sandra, please submit for scan and initial review

A. Correct.

MS. GUERTIN: Okay. So Robert, just to clarify, is Hallie Hawkins --

MR. CASSOT: Yes.

MS. GUERTIN: She is prepared to talk about the differences between those two.

MR. CASSOT: Auto, facultative and impact of reinsurance.

MS. GUERTIN: Okay. On reinstatement. Good. Thank you.

BY MS. GUERTIN:

Q. When you say in this email "APP file," A-P-P, what does that mean?

A. We order the original application file that we originally received as part of new business in order to look for the reinsurance information, the reinsurance company's name, the reinsurance file number.

Q. I see. Okay. Just going back to the previous email that we were looking at from earlier that same day, who tentatively declined the request?

A. The underwriter.

Q. The underwriter Hallie Hawkins?

A. Yes.

Q. And she communicated that to you?

A. Yes.

Q. Okay. Did you have any role in determining whether these policies would be reinstated or not?

A. No.

(Plaintiff's Exhibit No. 74, February 2014 Email Chain Between Toniann Fragala, Sandra Huffstetler and Others, was marked)

BY MS. GUERTIN:

Q. I'm going to show you what has been marked as Plaintiff's Exhibit 74, which is an email chain Bates numbered AXA 002287 through 2289. Do you recognize this email --

OBJECTION
relevance, hearsay
p. 81:6-82:11

A. Yes.

Q. -- or these emails? The email from David Hungerford on the first page to yourself, he says: "I received a call from Mr. Wiener's office indicating that they were unaware of the medical information submitted by his doctor for the reinsurance and wanted to get a copy of the doctor's notes. They felt the notes may not reflect Mr. Wiener's true medical condition. Let me know if you can release them to the insured or owner." Can you explain what this email meant to you?

A. It sounded like he was wanting us to

release the medical records that we had obtained for reinstatement consideration to the client.

Q. Okay. His statement about the fact that they felt the notes might not reflect his true medical condition, did that impact, to your knowledge, the assessment of the reinstatement application?

A. I don't know.

Q. Okay. Did it affect how you handled the processing of the reinstatement?

A. No.

Q. Did you reach out to anyone other than the primary care physician for medical records in this case?

MR. CASSOT: Objection to the form.

BY MS. GUERTIN:

Q. Let me rephrase it. Did you receive medical records from any other doctors for this case?

A. No.

Q. Did you request any medical records for this case?

A. No.

Q. Okay. Your email in response at the top, you indicate you regret that we would not

release these medical records. What do you mean by that?

A. We wouldn't send the medical records that we had obtained from Dr. Boyd to the client.

Q. Why not?

A. Because those were obtained at AXA's expense for reinstatement consideration. And that is something that he can go to his doctor to obtain.

Q. How did you know that that should be the response?

A. I believe there may be a job aid that says that we don't release medical records.

OBJECTION
relevance
p. 82:24-83:21

Q. A job A?

A. Job aid.

Q. Oh. Job aid. What is that? Like a guideline of some sort?

A. Yeah, procedures.

Q. Would you have said this without there being some sort of procedure?

A. I wouldn't have said that unless I knew for sure.

(Plaintiff's Exhibit No. 75, 3-5-14 Letters to Malcolm Wiener from Sandra Huffstetler, was marked)

BY MS. GUERTIN:

Q. Let me show you what has been marked as

reinstatement?

A. I don't recall why I would have sent it.

Q. Were you instructed to send it?

A. No.

Q. Is it part of your job duty to -- job duties to, you know, keep in touch with an agent in a situation like this?

A. Yes.

Q. And do you know who did make the decision? The underwriter?

A. Yes.

(Plaintiff's Exhibit No. 79, Advice Of Underwriting Decision, was marked)

BY MS. GUERTIN:

Q. I'm going to show you what has been marked as Exhibit 79. This is a letter with Bates numbers AXA001023 through 1024. Do you recognize this letter?

OBJECTION
relevance
p. 94:15-96:20

A. Yes.

Q. What is this?

A. This is the Advice Of Underwriting Decision that is letting the insured know that their reinstatement has been declined.

Q. Do you know who Richard Jaegar, M.D. is?

A. He is one of our medical directors.

Q. Do you know what medical directors do?
A. No.
Q. Okay. Did you speak to him at all?
A. No.
Q. Do you know why he sent this letter? Him, specifically, I mean.
A. He didn't send the letter. His signature is on these letters.
Q. What do you mean by that?
A. Well, I typed the letter up, and his name is embedded in this letter.
Q. Is it like a template letter that you use?
A. Yes.
Q. And you said you typed it?
A. Yes.
Q. Okay. How did you know what to put in this letter?
A. Well, I put -- the only thing I put in the letter is the insured's information, address, date, insured's name, the application file; that it was a reinstatement, and the specific information received from Dr. Barry Boyd which would have come from the underwriter.
Q. Okay. So this part that's in italics

here is the part that you added to the letter?
A. Yes.
Q. Okay. And that information came from Hallie Hawkins?
A. Yes.
Q. And was it something that was communicated to you via the AWD system or orally? How did you get that?
A. I don't recall if it was AWD or email or both.
Q. Okay. And you did not consult with Dr. Jaegar?
A. No.
Q. Is his name on all AUDs?
A. Yeah. For requests that are declined due to medical reasons, yes.
(Plaintiff's Exhibit No. 80, MIB Search Response, was marked)
BY MS. GUERTIN:
Q. All right. I'm going to show you what has been marked as Plaintiff's Exhibit 80. This is a document Bates numbered AXA000543. Do you recognize that document?
A. Yes.
Q. What is it?

A. It's an MIB Search Response where we have gone out to see if there is any MIB codes.

Q. Did you perform this search?

OBJECTION
relevance

A. I don't recall.

Q. And what does this show?

A. It shows that there was no MIB for the information that we entered, the insured's name, date of birth.

Q. Okay. And does the date that appears at the top of the page where it says: "Confidential - July 22, 2008," is that, to the best of your knowledge, when that search was run?

A. I'm not sure.

Q. Have you ever seen a screen like this before?

A. Uh-huh.

Q. That's a yes?

A. Yes. I'm sorry.

Q. That's okay. When we talked earlier about MIB codes and the email -- maybe we should just pull it out, the email where Hallie Hawkins sent you a number of MIB codes --

A. Uh-huh. Yes.

Q. -- here we go. That's Exhibit 71. Is this the screen? In Exhibit 80, is that what it

would look like when you were putting those in, or no?

OBJECTION
relevance, foundation

A. No. Uh-uh.

Q. That's something different?

A. When we enter it, it is different, yeah. This is the result you would get. That would show these if you got results back (indicating.)

Q. Okay. Just to clarify, Exhibit 80 would be the result if you inputted -- you might get these MIB codes back as a result of that search?

A. Yes. Yes.

MS. GUERTIN: Okay. Why don't we take a short break.

(Break In Proceedings)

BY MS. GUERTIN:

Q. Just a couple of follow-up questions for you. Do you know if Dr. Jaegar reviewed this file at all?

A. No.

Q. You don't know?

A. I don't know.

Q. Okay. And then with respect to Exhibit 71 where Hallie Hawkins sent you MIB codes, is it your understanding that these are codes that she generated?

A. Yes.
Q. Okay. From her review of the records?
A. Yes.
Q. Okay. And she was asking you to report them to MIB. Correct?
A. Correct.
Q. Okay. Is there anything that you did to verify the accuracy of these codes?
A. No.
Q. Okay. You just took this and inputted it. Correct?
A. Yes. Yes. And we would get an error in the MIB system, on their website, if these codes were not correct; if there was something wrong with them.
Q. Okay. So do you know the date when you inputted those codes into MIB?
A. No.
Q. Would that be memorialized anywhere?
A. When you get a response back. I don't remember if I actually captured the screenshot of the MIB when I entered it, the confirmation.
Q. Okay. If you had captured that screenshot, where would that be?
A. It should be in the AWD case.

Q. Okay. Do you know if the Reinsurance company would have seen the MIB codes that you inputted into the MIB system?

A. They would not have.

Q. Why not?

A. Because the MIB codes would have been entered after the final decision had been made.

Q. Why is that the case?

A. Because entering the -- because that's the procedure. The AUD and the MIB codes are the last thing we do before we decline the case in AWD.

Q. Okay. So you don't enter those codes until the very end, essentially.

A. Correct.

Q. Until after you receive the assessment from Reinsurance, even.

A. Correct.

Q. Okay. Now, when you say that the system would kick back an inaccurate code to you, you're not saying that it does some sort of medical analysis?

A. No.

Q. Okay. So it's relying on you or the underwriter and their assessment of the medical conditions. Correct?

A. Correct.

Q. Okay. It's only verifying if those codes are -- those codes exist somewhere.

A. Correct.

Q. Okay. And do you know when this -- when this reinstatement application first came in, do you know if there were any MIB codes associated with Malcolm Wiener?

OBJECTION
relevance

A. I don't recall.

Q. Okay. Is there something you can look at that would tell us if that was the case?

A. You can look in the AWD case.

Q. Not in the notes, but somewhere else?

A. Let's see. There is no indication of MIB codes.

Q. Okay. Does it state that there are no MIB codes, or is it just silent on the issue?

A. It's silent on the issue.

Q. Okay. You mentioned that there is more to the AWD than just these notes. Correct?

A. Correct.

MS. GUERTIN: Okay. Can we just go off the record for a second?

(Off-the-record discussion)

BY MS. GUERTIN: